LOCAL RULES FOR THE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

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CHAPTER 1. ADMINISTRATIVE RULES

RULE 1.1 GENERAL

1.1.1 Citation of Rule

These rules shall be known and cited as the "The Superior Court of Fresno County, Local Rules." **(Effective January 1, 2008, Rule 1.1.1 renumbered effective January 1, 2006; adopted as Rule 1.1 effective July 1, 1999)**

1.1.2 Effective Date of Rules

Repealed. **(Effective January 1, 2009, Rule 1.1.2 renumbered effective January 1, 2006; adopted as Rule 1.2 effective January 1, 1997)**

1.1.3 Construction, Scope and Effect of Rules

A. These rules shall be construed to secure the efficient administration of the business of the court and to promote and facilitate the administration of justice by the court.

B. These rules shall govern all proceedings in the court.

C. These rules are supplementary and subject to, and at all times shall be construed and applied so as to be compatible with California statutes, the California Rules of Court and other rules adopted by the Judicial Council of California. When a specific California Rule of Court or code section designated in these rules is amended or renumbered, the successor Rule of Court or code section shall be applicable. **(Rule 1.1.3 renumbered effective January 1, 2006; adopted as Rule 1.3 effective January 1, 1999)**

1.1.4 Definitions

The definitions set forth in the California Rules of Court, or any other rules adopted by the Judicial Council, shall apply with equal force and for all purposes to these rules, unless the context or subject matter herein otherwise requires.

Alternative Dispute Resolution: "Alternative Dispute Resolution" or "ADR" means a process, other than formal litigation, in which a neutral person or persons resolve a dispute or assist parties in resolving their dispute. Examples include mediation, arbitration, neutral evaluation, and mini-trial.

Clerk: The word "Clerk" means the Clerk of the court and any deputy clerks.

Complex Litigation: The words "complex litigation" mean cases that meet the definition of "complex case" found in Rule 3.400 of the California Rules of Court.

Court: The word "court" means the Superior Court of California, County of Fresno, and includes and applies to any duly appointed or elected judge, to any duly appointed commissioner or referee, to any judge or retired judge who has been assigned by the Chairperson of the Judicial Council to serve, and is serving, as a judge of the court, and to any attorney who is a member of the State Bar of California designated by the Presiding Judge or any other judge as a temporary judge, while the attorney is serving as a judge.

Court's Website: The court's website is http://www.fresnosuperiorcourt.org.

Day or Days: The word "day" or "days", unless otherwise specified, shall mean calendar day or days.

Department: The word "department" means either a numbered courtroom or an administrative unit of a division.

Division: The word "division" means any of the following divisions which comprise the court: Archives Division, Central Division, Clovis Division, Coalinga Division, Firebaugh Division, Juvenile Division, Kingsburg Division, Reedley Division, Sanger Division, and Selma Division.

General Civil Case: The words "general civil case" mean a limited or unlimited civil case, except probate, guardianship, conservatorship, family law, juvenile proceeding, other civil petition, complex litigation, unlawful detainer, and small claims cases.

Judgment: The word "Judgment" includes and applies to any judgment and to any other order or decree from which an appeal lies.

Judicial Council Rules: The words "Judicial Council Rules" mean any rules heretofore or hereafter adopted by the Judicial Council of the State of California for superior courts.

Judicial Officer: The words "judicial officer" mean any duly appointed or elected judge of the court, any duly appointed commissioner or referee, any judge or retired judge assigned by the Chairperson of the Judicial Council to serve as a judge of the court, and any attorney designated to serve as a temporary judge, while so serving.

Limited Civil Cases: The words "limited civil cases," mean limited civil cases as defined in Code of Civil Procedure § 86.

Meet and Confer: The words "meet and confer" mean a telephone conference between opposing parties or, whenever reasonably possible, a face-to-face meeting. A meet and confer obligation is not satisfied by an exchange of letters.

Paper: The word "paper" includes all pleadings, notices and other documents.

Party: Unless otherwise indicated, "party" means the party litigant, but if the litigant is represented by an attorney, then "party" means the attorney.

Person: The word "person" shall include and apply to corporations, partnerships, proprietorships, associations and all other entities, as well as natural persons.

Plaintiff: The word "plaintiff" means a plaintiff or petitioner; it also means cross-complainant in those cases where the plaintiff is no longer an active party.

Presiding Judge: The words "Presiding Judge" mean the elected Presiding Judge of the court, or the Presiding Judge's designee, unless a case has been filed in, or assigned to, a division other than the Central Division, in which event the words "Presiding Judge" mean the judge of that division.

Short Cause Case: The words "short cause case" mean any case in which the time estimated for trial by all parties is five (5) hours or less.

Unlimited Civil Case: The words "unlimited civil case" mean a civil action or proceeding other than a limited civil case. **(Effective July 1, 2011, Rule 1.1.4 renumbered effective January 1, 2006; adopted as Rule 1.4 effective January 1, 2005)**

1.1.5 Amendment, Addition or Real of Rules

Subject to the California Rules of Court, these rules may be amended or repealed, and new rules may be added, by a majority vote of the judges of the court. Written notice of the exact wording of the proposed amendment, addition or repeal shall be given to all of the judges prior to taking a vote. Written notice may be waived by a majority of the judges, if the Presiding Judge declares the proposed amendment, addition, or repeal to be an urgency measure. **(Rule 1.1.5 renumbered effective January 1, 2006; adopted as Rule 1.5 effective January 1, 1999)**

1.1.6 Failure to Comply with Rules

A. The failure of any party to comply with these rules, unless good cause is shown, or the failure of any party to participate in good faith in any hearing or conference required by these rules, is an unlawful interference with the proceedings of the court and may be punishable by contempt. The court may order the party at fault to pay the opposing party's reasonable expenses and counsel fees, to reimburse or make payment to the county, may order an appropriate change in the calendar status of the case and impose any other sanctions authorized by law. The appearance of a party in pro per does not excuse compliance with these rules.

B. The fact that the court does not strictly enforce some provision or requirement of these rules on some occasion should not be construed as an indication that the court cannot or will not strictly enforce that provision or requirement on other occasions. **(Rule 1.1.6 renumbered effective January 1, 2006; adopted as Rule 1.6 effective July 1, 2000)**

1.1.7 Court Security

Security in courtrooms shall be maintained by the Sheriff of the County of Fresno, unless otherwise ordered by the Presiding Judge. **(Rule 1.1.7 renumbered effective January 1, 2006; adopted as Rule 1.7 effective January 1, 1997)**

1.1.8 Court Attire

No person shall appear in court without a shirt, or barefoot, or wearing a tank top. Bailiffs of the court are to remove any person violating this rule. This rule does not limit any judge from prescribing appropriate attire in the courtroom. **(Rule 1.1.8 renumbered effective January 1, 2006; adopted as Rule 1.8 effective January 1, 1997)**

1.1.9 Appearance for Another Attorney

An attorney who appears for another attorney is representing the party then before the court. As provided by the California Rules of Professional Conduct such attorney is required to do so competently, and is expected to be prepared to carry out and perform any duties required by the court, to have authority to make appropriate dispositions or calendar settings and to communicate any orders the court may issue to the attorney of record. **(Rule 1.1.9 renumbered effective January 1, 2006; adopted as Rule 1.9 effective January 1, 1997)**

1.1.10 Filing and Format of Documents

All papers shall conform to these rules and the California Rules of Court, and shall be typewritten or legibly printed. The Clerk will not accept for filing any papers not in compliance unless otherwise ordered by the court. **(Rule 1.1.10 renumbered effective January 1, 2006; adopted as Rule 1.10 effective January 1, 1997)**

1.1.11 Forms of Payment

A. A personal check, bank cashier's check or draft, money order or traveler's check offered in payment of any fee, fine or bail deposit may be accepted by the Clerk as provided herein.

B. Personal checks shall be drawn on a banking institution located in California. Cashier's checks or money orders may be drawn on an issuing institution located in the United States.

C. The amount shall be the exact amount of the fee, fine or bail; change will not be given. The date on the check must not be over one month previous to the date presented; post-dated checks are not acceptable. The original payee must be the Fresno County Superior Court or other similar designee. Two-party checks are not acceptable. The numeric figures must agree with the amount written in words. The sum must be in U.S. currency.

D. Any check or money order which appears irregular on its face may be refused. Personal checks from persons known to have previously tendered dishonored checks may be refused. Checks returned to the court are subject to the applicable fees established by the Fresno County Superior Court.

E. Coinage of more than $50.00 shall be counted and rolled. **(Effective July 1, 2011; Rule 1.1.11 renumbered effective January 1, 2006; adopted as Rule 1.11 effective July 1, 2001)**

1.1.12 Custody of Court Files and Signed Orders

A. No papers, exhibits, or evidence on file with the Clerk in any civil or criminal case shall be taken from the Clerk's Office, except by order of the court or in response to a subpoena duces tecum.

B. Orders signed by a judge must be filed immediately in the Clerk's Office. An unfiled signed order shall not be taken from the courthouse. **(Rule 1.1.12 renumbered effective January 1, 2006; adopted as Rule 1.12 effective January 1, 1997)**

1.1.13 Attorney's Duty to Comply with Calendar

An attorney shall not accept representation of a client if the attorney does not have sufficient time to adequately prepare before the next scheduled court appearance, and shall comply with all applicable case disposition standards unless otherwise ordered by the court. **(Rule 1.1.13 renumbered effective January 1, 2006; adopted as Rule 1.13 effective January 1, 1997)**

1.1.14 Filing and Acceptance of Papers

All papers are to be submitted for filing at the Clerk's Office during normal business hours. For purposes of this section, normal business hours shall be 8:00 a.m. through 4:00 p.m., Monday through Friday, excluding court holidays. Acceptance of papers for filing with the court shall be deemed to occur:

1. On the date the papers were submitted to the Clerk's Office for filing if the submission occurred during normal business hours of the Clerk's Office; and,

2. On the next business day the Clerk's Office is open for business if the submission occurred after normal business hours of the Clerk's Office.

To be deemed submitted during the normal business hours of the Clerk's Office the person submitting the papers for filing must have gained entry to the Clerk's Office during normal business hours. In the event that the submission or entry to the Clerk's Office occurred after normal business hours the filing will occur on the next business day. Nothing in this section shall limit the clerk's ability to reject filings.

Any exceptions to these rules can be effected by posting of a policy allowing filing through a drop-box. **(Effective July 1, 2010, adopted as Rule 1.1.14 effective January 1, 2009)**

1.1.15 Filing Notices of Appeal

Notices of Appeal can only be filed at the Clerk's Office, in either the civil division or criminal division, as otherwise provided for in accordance with rule 1.1.14. They will not be accepted for filing in any individual courtroom. **(Effective July 1, 2010, New)**

1.1.16 Returned Checks

Notification will be mailed if a check is returned for any reason (e.g., insufficient funds, stop payment or account closed). A "returned check hold" will be placed on all accounts and cases of the person whose check is returned, which will block the ability to pay any fees and/or fines by check and may result in the striking of court filings. To remove the hold on the accounts and cases, the party must pay in cash or with certified funds the original check amount plus a returned check fee that is set by the Court. Once the hold is removed the person may again pay the fees and/or fines by check. **(Effective July 1, 2011; adopted as Rule 1.1.15 (now 1.1.16) effective January 1, 2010)**

(Rule 1.1 renumbered effective January 1, 2006; adopted as Rule 1 effective July 1, 1992)

RULE 1.2 COURT ORGANIZATION

1.2.1 Election, Term and Duties of Presiding Judge

A. Election and Term

The Presiding Judge shall be elected and may be removed by a majority of all judges by secret ballot. The election of the Presiding Judge shall take place at a regular meeting held in the fall of each year in which the term of the prior Presiding Judge expires. Nominations for the position of Presiding Judge shall be made in writing and delivered to the secretary of the Executive Committee not earlier than twenty-one (21) days prior to the meeting and no later than seven (7) days prior to the regular meeting in which the election is to be held. Any Fresno County Superior Court Judge may be nominated by another judge or may nominate himself or herself for the position of Presiding Judge.

The Presiding Judge shall be elected to serve a two-year term commencing the following January 1. The Presiding Judge may be reelected.

B. Powers and Duties

The Presiding Judge shall have those powers and duties conferred on the Presiding Judge as provided by statute, California Rules of Court and rules as adopted by the Fresno County Superior Court.

The Presiding Judge's duties shall include, but are not necessarily limited to, the following:

Selecting the court's Assistant Presiding Judge.

Presiding over regular and special court's meetings.

Presiding over Executive Committee meetings.

Setting and implementing policies and procedures.

Planning for the court's future needs.

Supervising the Executive Officer.

Conducting the day-to-day affairs of the court.

Designating an Acting Presiding Judge, when the Presiding Judge is unavailable or absent. **(Rule 1.2.1 renumbered effective January 1, 2006; adopted as Rule 2.1 effective April 6, 2002)**

1.2.2 Assistant Presiding Judge

A. **Selection**

The Presiding Judge shall select the Assistant Presiding Judge from among all Fresno County Superior Court Judges.

B. **Duties**

The duties of the Assistant Presiding Judge shall be the same as the Presiding Judge in his or her absence at the discretion of the Presiding Judge. Other duties may be delegated to the Assistant Presiding Judge by the Presiding Judge. The Assistant Presiding Judge shall be a member of the Executive Committee. **(Rule 1.2.2 renumbered effective January 1, 2006; adopted as Rule 2.2 effective January 1, 1999)**

1.2.3 Acting Presiding Judge

An Acting Presiding Judge may be designated by the Presiding Judge in the Presiding Judge's absence or unavailability. **(Rule 1.2.3 renumbered effective January 1, 2006; adopted as Rule 2.3 effective January 1, 1999)**

1.2.4 Regular and Special Meetings

A. **Membership**

All Fresno County Superior Court Judges created under Article VI of the California Constitution shall be voting members.

The Court Executive Officer shall be a non-voting ex officio member and shall serve as secretary at all judges' meetings.

Court Commissioners may attend all judges' meetings unless otherwise informed.

B. **Judges' Meetings**

1. Regular Meetings

The judges may hold regular meetings at least once every month unless otherwise determined by the Presiding Judge. The meetings shall be held at a reasonably fixed date, time and location. Agendas for all meetings shall be distributed no less than four (4) working days prior to the meeting. Minutes of all meetings shall be distributed as soon as possible.

2. Semi-Annual Meetings

The judges shall hold extended meetings two (2) times each calendar year. One of those meetings shall be scheduled during the fall. Biennially, at the fall meeting, one of the agenda items shall be the election of the Presiding Judge. The Executive Committee shall schedule these semi-annual meetings at a reasonably fixed date and location and provide all judges with at least thirty (30) days written notice thereof. These meetings shall be designated as regular meetings. The purpose of these meetings is to discuss and formulate major policies, strategies and other issues which cannot be discussed adequately at a regular meeting.

3. Special Meetings

Special meetings may be called by at least twenty-five percent (25%) of the judges or by the Executive Committee, provided written notice of the date, time and place of the meeting is given to all judges at least seven (7) calendar days prior to the date of the meeting.

C. **Voting**

Each Judge shall have one (1) vote. Any judge who does not attend a regular or special meeting may authorize another Fresno County Superior Court Judge to exercise a written proxy, general or specific as stated in the proxy, and vote on his or her behalf.

D. **Quorum**

A quorum for the conduct of business shall require at least fifty percent (50%) of the total number of voting members (inclusive of general, but not of specific proxies) plus one (1). The proxy must be submitted to the secretary prior to the voting on any issue in which a proxy vote is to be cast. **(Rule 1.2.4 renumbered effective January 1, 2006; adopted as Rule 2.4 effective January 1, 2002)**

1.2.5 Election, Term and Duties of Executive Committee

A. Composition/Selection of Voting Members

There is hereby established an Executive Committee. The committee shall be comprised of seven (7) judges, one of whom must be the Presiding Judge, and one of whom must be an Assistant Presiding Judge. The remaining judge members shall be elected by all Fresno County Superior Court Judges.

In addition, in an effort to ensure leadership continuity and a heightened awareness of court history and decision-making considerations, the immediately preceding Presiding Judge shall occupy an "emeritus" membership position for up to two consecutive one-year terms, at his or her option. The emeritus position shall be a non-voting member.

The Court Executive Officer shall be a non-voting member and shall serve as secretary of the Executive Committee.

At the fall semi-annual meeting and by written notice to each judge, the secretary of the Executive Committee shall notify each judge that nominations for judge members of the Executive Committee are open and shall close fourteen (14) days after the date of the written notice. Nominations for Executive Committee judge members shall be made in writing and delivered to the secretary of the Executive Committee. Within three (3) court days after the close of nominations, the secretary shall distribute written ballots to all judges that must be returned to the secretary no later than fourteen (14) days thereafter. Any judge may be nominated by another judge or by himself or herself for the position of Executive Committee member.

B. Executive Committee Membership

The five (5) judge members shall be elected at large from among all Fresno County Superior Court Judges. Vacancies in any member position, regardless of the reason – elevation, retirement, death, disability, resignation, etc. – shall be filled for the remainder of the term by a majority vote of the remaining members of the Executive Committee, unless just cause to leave the position vacant, such as the limited amount of time left on the departing member's term, is determined by the Executive Committee.

The Executive Committee shall announce the vacancy in writing to all judges. Any judge interested in serving in the vacant position shall have one (1) week to notify the Executive Committee of his or her interest.

C. Term of Office for Voting Members

The term of office for Executive Committee members shall be two (2) years, commencing January 1 of the calendar year following selection.

The terms of the members shall be staggered so that each January 1, no more than four (4) of the seven (7) members change, unless an exception is approved by the Executive Committee.

D. **Voting**

Each judicial member of the Executive Committee shall have one (1) vote. Any member who does not attend a committee meeting may authorize another judge to exercise a written proxy, general or specific as stated in the proxy, to vote on his or her behalf. No judicial member shall exercise more than two (2) proxies on behalf of other judicial members. The proxy should be provided to the secretary in advance of the meeting. All matters coming before the committee for approval shall require a majority vote of voting members present.

E. **Quorum**

At least four (4) voting members of the Executive Committee in attendance are necessary to establish a quorum. Submission of a general proxy shall not constitute presence at the meeting for the purpose of a quorum.

F. **Meetings**

The Executive Committee shall hold regular meetings at least once every month. Any Fresno County Superior Court Judge may attend any meeting of the committee. Notice of the time, place and agenda for committee meetings shall be provided to all judges at least twenty-four (24) hours before the meeting and minutes of the meeting shall be promptly prepared and immediately distributed to all judges. Voting on issues shall be limited to agenda items except for items designated as emergency items by a majority of the Executive Committee. Meetings of the Executive Committee shall be chaired by the Presiding Judge.

Any member of the Executive Committee, other than the Presiding Judge, who is absent from three (3) consecutive meetings without good cause as determined by the Executive Committee, or who is excessively absent as determined by the Executive Committee, may be removed as a member by majority vote of the Executive Committee. The remaining members of the Executive Committee shall by majority vote elect a replacement member to serve the remainder of the term of the removed member.

G. **Duties**

The duties of the Executive Committee shall include:

1. Recommending court policy and procedures for implementation by the Presiding Judge.

2. Reviewing, in its discretion, the decisions and actions of the Presiding Judge and Executive Officer and, where appropriate, making recommendations to the Presiding Judge.

3. Establishing budgetary priorities and approving budget for submission to the State Trial Court Budget Commission.

4. Recommending for hire an Executive Officer.

5. Conducting an annual evaluation of the performance of the Executive Officer.

6. Selecting and hiring Court Commissioners. **(Effective July 1, 2011; Rule 1.2.5 renumbered effective January 1, 2006; adopted as Rule 2.5 effective January 1, 2002)**

1.2.6 Committee Assignments

All committee members shall be appointed by the Presiding Judge. **(Rule 1.2.6 renumbered effective January 1, 2006; adopted as Rule 2.6 effective January 1, 1999)**

1.2.7 Court Executive Officer

Pursuant to Government Code § 69898, the Court Executive Officer, under the direction of the Presiding Judge, shall exercise all of the powers, duties and responsibilities as Clerk of the Fresno County Superior Court. These powers, duties and responsibilities shall include all of those previously performed by the County Clerk as Ex Officio Clerk of the Fresno County Superior Court, and those pertaining to the Grand Jury prescribed by Penal Code §§ 900 and 933. Pursuant to Government Code § 26800, the County Clerk is hereby relieved of any obligation imposed by law with respect to these powers, duties and responsibilities. Pursuant to Government Code § 69893 and Code of Civil Procedure § 195, the Court Executive Officer shall also serve as Jury Commissioners.

The duties of the Court Executive Officer shall include, but are not necessarily limited to, those set forth in California Rules of Court, Rule 10.610, and such other duties as may be assigned by the Presiding Judge. The Court Executive Officer shall be responsible for the selection, retention and direction of all non-judicial personnel of the court. The Court Executive Officer shall be an exempt employee whose selection shall be recommended by a majority of the Executive Committee and approved by a majority vote of all Fresno County Superior Court Judges, who may be terminated by a majority vote of all Fresno County Superior Court Judges. The Court Executive Officer shall serve as a non-voting member of the Executive Committee and shall serve as secretary. The secretary is responsible for conducting all elections and counting all votes. **(Effective July 1, 2007; Rule 1.2.7 renumbered effective January 1, 2006; adopted as Rule 2.7 effective January 1, 1999)**

1.2.8 Court Commissioners

Court Commissioners shall be exempt employees who shall serve at the pleasures of the judges of the Fresno County Superior Court. They shall be selected by the Executive Committee and may be terminated by a majority of all Fresno County Superior Court Judges. The court shall conduct at least an annual evaluation of Court Commissioners or additional evaluations as needed. **(Rule 1.2.8 renumbered effective January 1, 2006; adopted as Rule 2.8 effective January 1, 1999)**

1.2.9 Definition of a Judicial Vacation Day

Pursuant to Rule 10.603(c)(2)(E) of the California Rules of Court, the Presiding Judge of each Court is required to allow the judges of that court vacation days according to their number of years of service. Rule 10.603(c)(2)(H) requires each court to define a vacation day, for purposes of the above entitlement.

A "day of vacation" for a judge of the court shall be defined as an approved absence for one full business day. Consistent with the needs of the court and on approval of the Presiding Judge, a judge may nevertheless use accumulated unused vacation leave in half-day increments. **(Effective January 1, 2009, New)**

(Rule 1.2 renumbered effective January 1, 2006; adopted as Rule 2 effective July 1, 1992)

(Chapter 1 amended effective January 1, 2006; adopted as I effective July 1, 1992)

CHAPTER 2. CIVIL RULES

RULE 2.1 ADMINISTRATION OF CIVIL CASES

2.1.1 Applicability

The provisions of Rule 2.1 shall apply to all general civil cases and complex litigation, as defined in Rule 1.1.4, unless otherwise specified in these rules **(Rule 2.1.1 renumbered effective January 1, 2006; adopted as Rule 3.1 effective May 14, 2001)**

2.1.2 Case Disposition Time Standards

A. The court adopts the case disposition time standards set forth in §§ 2.1 and 2.3 of the California Standards of Judicial Administration.

B. The court shall endeavor to dispose of all general civil cases as follows: 90% within twelve (12) months after filing, 98% within eighteen (18) months after filing, 100% within twenty-four (24) months after filing. **(Effective January 1, 2012; Rule 2.1.1 renumbered effective January 1, 2006; adopted as Rule 3.2 effective July 1, 2000)**

2.1.3 Tracking Cases

All pending cases shall be calendared for a future event. No pending case shall go off calendar without a future event being set. **(Rule 2.1.3 renumbered effective January 1, 2006; adopted as Rule 3.3 effective May 14, 2001)**

2.1.4 Notice of Case Management Conference

A. At the time the complaint is filed, the Clerk will issue a Notice of Case Management Conference to plaintiff, designating a date for a Case Management Conference that is no less than 120 days after the filing of the complaint. Plaintiff shall serve a copy of the Notice of Case Management Conference on each defendant along with the summons and complaint.

B. Any party who files and serves a cross-complaint prior to the Case Management Conference shall serve on each cross-defendant who is a new party to the action a copy of the Notice of Case Management Conference along with the summons and cross-complaint. If a new cross-defendant is served after the initial Case Management Conference, the cross-complainant shall serve the new cross-defendant with notice of any pending Case Management Conference, any assigned trial or settlement conference dates, and any other dates set by the court or orders made at the Case Management Conference.

C. If plaintiff adds a new defendant or identifies a fictitiously named defendant after the initial Case Management Conference, along with the summons and complaint, plaintiff shall serve the newly named defendant with notice of any pending Case Management Conference, any assigned trial and settlement conference dates,

and any other dates set by the court or orders made at the Case Management Conference.

D. Proof of service of notice of a Case Management Conference shall be filed with the court and may be included in the proof of service of the summons and complaint or cross-complaint **(Rule 2.1.4 renumbered effective January 1, 2006; adopted as Rule 3.4 effective May 14, 2001)**

2.1.5 Service and Filing of Proof of Service

A plaintiff shall serve all named defendants with all pleadings and notices required by these rules or other law, including notice of a Case Management Conference, and shall file proof of service with the court, within sixty (60) days from the date the complaint is filed. **(Rule 2.1.5 renumbered effective January 1, 2006; adopted as Rule 3.5 effective July 1, 2002)**

2.1.6 Extensions of Time by the Court

A. The court may extend any time requirement for service of process or for filing proof of service or responsive pleadings upon a showing of good cause on noticed motion or by ex parte application, which may be made on the form available from the Clerk's Office and on the court's website. The motion or application must be filed before the expiration of the initial time period within which the act is required to be done. When a request for an extension is filed, the court may deny the request, grant an extension of time to a specified date, or conduct a hearing on the matter.

B. When applying to the court to extend time for service of process based on the conditions stated in Code of Civil Procedure § 583.240, the plaintiff shall set forth the earliest date by which service may reasonably be effected so that the court may set a date for service and for the filing of a proof of service. **(Rule 2.1.6 renumbered effective January 1, 2006; adopted as Rule 3.6 effective May 14, 2001)**

2.1.7 Case Management Plans

A. All general civil cases and complex litigation shall be assigned to one of the following case management plans:

1. Plan 1: cases to be disposed of within 12 months.

2. Plan 2: cases to be disposed of within 18 months.

3. Plan 3: cases to be disposed of within 24 hours.

4. Exempt complex litigation: complex litigation as defined in Rule 1.1.4 that is not expected to be disposed of within 24 months.

B. Unless designated as a complex case in accordance with the California Rules of Court, all general civil cases shall be deemed to be assigned to Plan 1 upon the filing of the complaint. The court may reassign a case to a different plan at the time of a Case Management Conference or on noticed motion showing good cause for the reassignment. **(Rule 2.1.7 renumbered effective January 1, 2006; adopted as Rule 3.7 effective May 14, 2001)**

2.1.8 Stipulation for Trial Setting in Lieu of Case Management Conference

A. In general civil cases that are at issue before the Case Management Conference, if no jury is demanded and the time estimate for trial is two (2) hours or less, the parties may execute and file a Stipulation for Trial Setting in Lieu of Case Management Conference. The Stipulation shall be filed on a form that is available from the Clerk's Office and on the court's website. The Stipulation must be signed by all attorneys and self-represented parties.

B. If the filing of the Stipulation does not result in a trial date being set prior to the Case Management Conference, the Case Management Conference must be attended by all attorneys and self-represented parties as required by Rule 2.1.9.

C. Preference shall be deemed waived unless the At Issue Memorandum or Counter At Issue Memorandum states that the case is entitled to preference in setting. **(Effective July 1, 2010; Rule 2.1.8 renumbered effective January 1, 2006; adopted as Rule 3.8 effective January 1, 2002)**

2.1.9 Case Management Conference

A. All parties are required to appear at the Case Management Conference. The person attending the conference shall have sufficient understanding of the case and sufficient authority to make decisions and agreements as necessary, including agreements regarding submission of the case to ADR (such as choosing the form of ADR and choosing an arbitrator or mediator), and decisions regarding demanding or waiving a jury trial, assignment of the case to a Plan and the dates to be set for trial and settlement conference.

B. Unless the court determines otherwise, all cases except complex litigation are deemed at issue and ready to be set for trial at the time of the Case Management Conference.

C. At the Case Management Conference, all at issue cases will be assigned a date for trial, mandatory settlement conference, and trial readiness hearing.

D. At the case Management Conference, the court may:

1. Reassign the case to Plan 2 or Plan 3;

2. Designate the case as complex litigation, refer it to the Presiding Judge for assignment of a judge for all purposes, and set it for a further Case Management Conference before the assigned judge;

3. Order or refer the case to ADR;

4. Direct one or more parties to effect service of process, file specified motions, or take other specified actions within specified time periods;

5. Record each party's demand or waiver of jury trial;

6. Schedule a further Case Management Conference;

7. Make a scheduling order, which may include a completion date for discovery and a final date for motions;

8. Schedule the matter for a dismissal hearing or issue an order to show cause;

9. Impose sanctions, including dismissal of the case;

10. Make such other orders as the court deems appropriate.

E. A Case Management Conference will be taken off calendar only if the case has been disposed of or has received a trial date prior to the Conference. For purposes of this rule, a case is disposed of if a judgment or dismissal of the entire action has been filed. If the case has been stayed or a notice of conditional settlement has been filed, the Conference will be continued. If any of these conditions has been met, it is the responsibility of the parties to notify the TCDR Clerk in writing and ask that the Conference be taken off calendar or continued. **(Rule 2.1.9 renumbered effective January 1, 2006; adopted as Rule 3.9 effective May 14, 2001)**

2.1.10 Trial Date and Conflicts

A. Ordinarily, Plan 1 cases will be assigned a trial date that is approximately 330 days after the date the complaint was filed.

1. At the request of all parties or at the request of any party without objection from any other party, a Plan 1 case may be set for trial on the earliest available court date. The request may be made at the At Issue Memorandum pursuant to Rule 2.1.8, or by stipulation. If the request is made in the At Issue Memorandum, it will be deemed unopposed if no Counter At Issue Memorandum is timely filed challenging the request. If an objection is made, the court will determine at the Case Management Conference whether the case should be set for trial on the earliest available court date.

2. Limited civil cases in which an early trial date is not requested as described in subdivision (1) will ordinarily be assigned a trial date that is approximately 90 days after the initial Case Management Conference date.

B. Plan 2 cases will be assigned a trial date that is approximately 480 days after the date the complaint was filed.

C. Plan 3 cases will be assigned a trial date that is approximately 630 days after the date the complaint was filed.

D. No trial date may be continued merely on stipulation of the parties. On a showing of good cause, the trial date may be continued by court order, obtained by noticed motion or by ex parte application presented to the Presiding Judge, or his or her designee, at least five (5) court days before trial. It may also be continued pursuant to (F) below.

E. If an application for a continuance is presented less than five (5) court days before the trial date, it shall contain a detailed factual declaration demonstrating good cause for the delay.

F. After a trial date has been assigned, any party who has a conflict with the trial date shall, immediately upon having knowledge of the conflict, submit a letter to the Presiding Judge and to all other parties notifying them of the conflict. The court shall maintain the trial date until the trial readiness hearing unless: (1) a continuance has been granted pursuant to (D) above, or (2) a continuance is approved by the Presiding Judge at the conclusion of the settlement conference. **(Rule 2.1.10 renumbered effective January 1, 2006; adopted as Rule 3.10 effective January 1, 2002)**

2.1.11 Complex Litigation

A. Cases designated as complex litigation shall be exempt from the case disposition time standards of Rule 2.1.2. When a case is designated as complex litigation, the case shall be referred to the Presiding Judge or his designee, who may assign the case to one judge for all purposes or make other orders as appropriate.

B. If the case is assigned to one judge for all purposes, any pending or future Case Management Conference will be heard before the assigned judge. At or after the Case Management Conference, the assigned judge shall establish a case progression plan and assign a trial date designed to ensure that the case will progress to a disposition in a timely fashion, consistent with the purposes of the Trial Court Delay Reduction Act and with the particular needs of the case. After assignment, the assigned judge shall hear all of the proceedings in the case, except the mandatory settlement conference and except as otherwise ordered by the Presiding Judge. The assigned judge shall monitor the case to its conclusion, with the goal that it be disposed of within three (3) years after filing.

C. If the case is not assigned to one judge for all purposes, the case will be set for a further Case Management Conference before the Case Management Conference judge or another designated judge. The Case Management Judge or designated judge shall establish a case progression plan and monitor the case to ensure timely disposition consistent with the exceptional circumstances, with the goal of disposition within three (3) years after filing. **(Rule 2.1.11 renumbered effective January 1, 2006; adopted as Rule 3.11 effective July 1, 2003)**

2.1.12 Continuance or Modification

No time standard or deadline specified in these rules, nor any schedule, date, time limitation or other requirement imposed by any order made pursuant to these rules may be modified, extended or voided by any stipulation or agreement of the parties unless a written order approving it is obtained from the court. Continuances, extensions or modifications may be obtained by noticed motion or ex parte application, on a showing of good cause. **(Rule 2.1.12 renumbered effective January 1, 2006; adopted as Rule 3.12 effective May 14, 2001)**

2.1.13 Settlement and Conditional Settlement

A. When a case settles, whether by conditional settlement or otherwise, the plaintiff shall comply with Rule 3.1385 of the California Rules of Court. Written notice of settlement shall be given on the Notice of Settlement form, which is available from the Clerk's Office and on the court's website.

B. When a settled case has not been dismissed within 45 days of the notice of settlement or within 45 days of the dismissal date specified in the notice, if the settlement is conditional, the court will set the matter for a Rule 3.1385 hearing. An unexcused failure or plaintiff to appear at the hearing may result in the court's dismissal of the case.

C. An extension of time for filing the dismissal may be granted on a showing of good cause. Requests for extensions shall be made on the Request for Extension of Time to File Dismissal form, which is available from the Clerk's Office and on the court's website. **(Effective July 1, 2007; Rule 2.1.13 renumbered effective January 1, 2006; adopted as Rule 3.13 effective July 1, 2002)**

2.1.14 Default Judgment

To obtain a default judgment a plaintiff shall present testimony in support of his or her claim by competent witnesses having personal knowledge of the essential facts, or file an affidavit or declaration by such witnesses, except for cases governed by Code of Civil Procedure § 585(a). When a plaintiff calendars a hearing for an application for default judgment, he or she must specify whether the proof will be by written declaration or oral testimony. Applications for default judgment on declarations pursuant to Code of Civil Procedure § 585(d) is the preferred procedure.

When submitting a matter for default judgment on declarations, the parties must comply with California Rules of Court, rule 3.1800. If a hearing has been scheduled and proof is to be by written declaration, the material required by rule 3.1800(a) must be submitted together as a single packet. Each exhibit must be separated by a hard 8 ½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. Any provision for attorney fees based on a contract must be highlighted within the written contract. Parties should file such default packets in the Clerk's Office at least five (5) court days prior to the scheduled hearing date.

If, after reviewing the materials submitted, the Court determines that oral testimony or additional documentary evidence is necessary, it will indicate that in the tentative ruling posted before the hearing pursuant to Local Rule 2.2.6. **(Effective January 1, 2012; Rule 2.1.14 renumbered effective January 1, 2006; adopted as Rule 3.14 effective July 1, 2000)**

2.1.15 Signatures on Orders

It is the policy of the court not to sign orders or judgments unless some portion of the text of the order or judgment appears on the page to which the judicial officer's signature is affixed, so that the connection between the signature page and the remainder of the order or judgment is apparent. **(Rule 2.1.15 renumbered effective January 1, 2006; adopted as Rule 3.15 effective July 1, 2000)**

2.1.16 Designation of Counsel

When a law firm is the attorney of record in a civil action, the attorney who signed the initial pleading shall be designated to receive notices in the case. If, after the filing of the initial pleading, the attorney who is to receive notices changes, then a Designation of Counsel must be filed with the court. The designation must include the name and state bar number of the designated attorney. The designation may be made on a form available from the Clerk's Office and on the court's website. **(Rule 2.1.16 renumbered effective January 1, 2006; adopted as Rule 3.16 effective May 14, 2001)**

(Rule 2.1 renumbered effective January 1, 2006; adopted as Rule 3 effective July 1, 1992)

RULE 2.2 CIVIL LAW AND MOTION

2.2.1 Setting Law and Motion Hearing

Prior to the filing of any law and motion matter, a date and time for hearing shall be reserved with the Clerk. Matters will be set for hearing by the Clerk upon receipt of a duly served notice of motion and supporting documents, with the hearing scheduled in accordance with the date and time reserved. **(Rule 2.2.1 renumbered effective January 1, 2006; adopted as Rule 4.1 effective January 1, 1997)**

2.2.2 Taking Law and Motion Hearing Off Calendar

A. Any party who reserves a date and time for hearing with the Clerk, but fails to timely file moving papers for a hearing on that date, shall promptly notify the Clerk and request that the hearing be taken off calendar.

B. Unless otherwise ordered by the court, any moving party who wishes to have a law and motion taken off calendar after the moving papers have been filed but before a response has been filed, may be required to give written notice to the Clerk, the assigned judge, and all parties at least five (5) court days before the scheduled hearing date. Notice to the Clerk may be sent by facsimile and shall be accompanied by proof that notification was given to all parties. Proof of notification to all parties may be made:

1. By proof of service by mail, or

2. By letter indicating that a copy thereof has been sent by facsimile to all parties, or

3. By a declaration stating when, and in what manner, notice was given to all parties.

C. A law and motion matter may also be taken off calendar by stipulation of the parties at least five (5) court days before the scheduled hearing, with written notice to the Clerk and assigned judge. Notice to the Clerk and assigned judge may be given by facsimile.

D. Any moving party who wishes to have a law and motion matter taken off calendar after the responsive papers have been filed shall do so by stipulation of the parties or shall obtain the permission of the assigned judge and give written notice to all parties. Proof of notification to all parties shall be made as described in (B) above.

E. Within five (5) court days of the hearing, permission to take the matter off calendar shall be obtained only from the assigned judge. **(Rule 2.2.2 renumbered effective January 1, 2006; adopted as Rule 4.2 effective January 1, 2003)**

2.2.3 Continuing a Law and Motion Hearing

A. Any request for continuance of a law and motion hearing, may be required to be made in writing to the assigned judge at least five (5) court days before the scheduled hearing with proof of notification to all parties as described in Rule 2.2.2. The request may be submitted by facsimile. The request for continuance shall include a specific date for the continued hearing and a statement indicating whether the other parties consent or object to the continuance and/or the requested new hearing date.

B. If the request is made after the five (5) court day time limit has passed, the request shall contain a detailed factual explanation demonstrating good cause for the delay. **(Rule 2.2.3 renumbered effective January 1, 2006; adopted as Rule 4.3 effective January 1, 2003)**

2.2.4 Additional Copies

In cases other than limited civil cases, the court requests that any papers filed with the Clerk in connection with a law and motion matter be accompanied by one full set of copies of the original (including exhibits). **(Rule 2.2.4 renumbered effective January 1, 2006; adopted as Rule 4.4 effective July 1, 2000)**

2.2.5 Telephonic Appearances

When telephone appearances are allowed, attorneys or parties may appear by "Court Call," by making prior arrangements with the private company that administers the program. Court Call may be arranged by calling (888) 882-6878, or the telephone number of any other vendor as approved by the Court. **(Effective July 1, 2008; Rule 2.2.5 renumbered effective January 1, 2006; adopted as Rule 4.5 effective July 1, 2000)**

2.2.6 Tentative Rulings

A. The court follows the tentative ruling procedure set forth in Rule 3.1308(a)(1) of the California Rules of Court. A tentative ruling on civil law and motion matter may be obtained by:

1. Telephoning the court at (559) 457-4943; or

2. Accessing tentative rulings on the court's website.

B. If a party wishes to appear for oral argument, the notice to be given to the court, as required by Rule 3.1308(a)(1) of the California Rules of Court, must be given by telephone to the clerk in the department to which the matter is assigned for hearing. **(Effective January 1, 2010; Rule 2.2.6 renumbered effective January 1, 2006; adopted as Rule 4.6 effective January 1, 2005)**

RULE 2.3 EARLY MANDATORY MEDIATION PILOT PROGRAM

Repealed. **(Effective January 1, 2007)**

RULE 2.4 ALTERNATIVE DISPUTE RESOLUTION (ADR)

2.4.1 ADR Information

Attorneys shall provide their clients with a copy of the ADR information package at the earliest available opportunity. Upon request, the ADR information package may be obtained from the Clerk. Plaintiffs and cross-complainants shall serve a copy of the ADR information package on each defendant or cross-defendant as required by the California Rules of Court. **(Rule 2.4.1 renumbered effective January 1, 2006; adopted as Rule 7.1 effective May 14, 2001)**

2.4.2 Judicial Arbitration

The provisions of Chapter 2.5, commencing with § 1141.10 of the Code of Civil Procedure and the provisions of California Rules of Court set forth in Title 3, commencing with Rule 3.810, regarding judicial arbitration shall apply to all civil cases as stated therein. It is determined to be in the interest of justice that any at-issue limited civil case pending on or filed after September 1, 1997, may be ordered by the court to arbitration, except as otherwise provided by law. **(Effective July 1, 2007, Rule 2.4.2 renumbered effective January 1, 2006; adopted as Rule 7.2 effective May 14, 2001)**

2.4.3 Mediation

The Presiding Judge has elected to apply the provisions of Code of Civil Procedure § 1775, et seq., to eligible cases. Cases eligible for judicial arbitration may be subject to court-ordered mediation. **(Rule 2.4.3 renumbered effective January 1, 2006; adopted as Rule 7.3 effective May 14, 2001)**

(Rule 2.4 renumbered effective January 1, 2006; adopted as Rule 7 effective July 1, 1992)

RULE 2.5 MANDATORY SETTLEMENT CONFERENCE

2.5.1 Mandatory Settlement Conference

A mandatory settlement conference shall be held pursuant to Rule 2.5 for every civil case set for trial on the master calendar, except as follows:

A. Small claims, unlawful detainers, and family law cases. (For Family Law Department requirements, refer to Rule 5.7.)

B. Short cause cases.

C. In any case where, at least thirty (30) days prior to the date set for trial, all parties have filed a written stipulation that they have previously engaged in one court-supervised settlement conference and do not believe another settlement conference would be productive. Plaintiff shall notify the calendar Clerk of the filing of the stipulation.

D. In any case where, at least thirty (30) days prior to the date set for trial, all parties have filed a written stipulation that they have engaged in mediation, conducted by a neutral mediator, and do not believe a settlement conference would be productive. Plaintiff shall notify the calendar Clerk of the filing of the stipulation.

E. By order of the court for good cause, based upon a petition addressed to the Presiding Judge citing this rule, filed and served on all other parties at least thirty (30) days prior to trial. Opposition to the petition shall be in writing, addressed to the Presiding Judge, filed and served on all parties no later than ten (10) days after service of the petition. There will be no oral argument on such petitions. Parties will be notified of the court's ruling. Good cause requires facts supporting the conclusion that it would be extremely unlikely that a settlement conference will resolve the case. **(Rule 2.5.1 renumbered effective January 1, 2006; adopted as Rule 8.1 effective January 1, 1997)**

2.5.2 Meet and Confer Prior to Settlement Conference

A. In all cases set for a settlement conference where the parties are not excused from attending the settlement conference, the parties shall meet and confer prior to the date set for the settlement conference in a good faith attempt to settle all issues. The requirement of this rule is met by a face-to-face meeting between the parties, or by engaging in mediation before a neutral mediator. If, however, an attorney's office is located outside of Fresno County, or a party in pro per resides outside of Fresno County, that party may meet the requirement of this rule by meeting and conferring telephonically in a good faith attempt to settle all issues. Communication by writing will not suffice.

B. The fact of compliance with this rule, and the results of the meet and confer conference shall be set forth in the settlement conference statement. **(Rule 2.5.2 renumbered effective January 1, 2006; adopted as Rule 8.2 effective January 1, 1998)**

2.5.3 Further Settlement Conference on Day of Trial

Notwithstanding Rule 2.5.1, the Presiding Judge may order any case to a further settlement conference on the day the case is set for trial. **(Rule 2.5.3 renumbered effective January 1, 2006; adopted as Rule 8.3 effective January 1, 1997)**

2.5.4 Conflicts in Scheduling and Special Requests

A. Any part who wishes to request a change in a settlement conference date due to a scheduling conflict, or who wishes to make any other special request regarding a settlement conference, shall present that request to the Presiding Judge by letter, with a copy mailed to each party, at least thirty (30) days prior to the date set for the settlement conference. Any party wishing to respond to the request shall respond by letter to the Presiding Judge, with a copy mailed to each party, within two (2) days of receipt of the request letter.

B. If the request is made after the thirty-day limit has passed, the request shall include a detailed factual declaration demonstrating good cause for the delay.

C. The party making the request may submit a stipulation or other paper reflecting the consent of all other parties to the proposed change. The court will generally not grant a request for a change of date for the settlement conference unless all parties have been contacted by the requesting party and have agreed to a new date and time.

D. Parties will be notified of the court's ruling.

E. On the request of an attorney whose office is located outside the County of Fresno, the court will attempt, if possible, to reschedule a settlement conference at a different time, but on the same date, when such request is made pursuant to subparagraph A above. **(Rule 2.5.4 renumbered effective January 1, 2006; adopted as Rule 8.4 effective January 1, 1997)**

2.5.5 Attendance

A. **Parties**. All parties shall be personally preset at the settlement conference except that an insured party is not required to appear where that party's insurance carrier admits coverage for all causes of action alleged against that party, full authority has been granted by such insured party to the carrier and attorney to settle within policy limits, and the highest demand for settlement is within policy limits. However, where the carrier assumes the defense pursuant to a reservation of rights, the insured shall attend the settlement conference also.

A party who is not an individual shall appear by a representative who shall be fully familiar with the facts of the case and have full authority to settle. If the party's governing body is a board, council, or committee which is required to approve settlement, the representative attending the settlement conference on behalf of that

party shall have authority to recommend approval directly to such governing body, without seeking approval from any other person prior to making such recommendation.

B. **Attorneys**. The trial attorney for the case shall be personally present. The only exception shall be where the trial attorney is engaged in another trial at the same time as the settlement conference, in which case another attorney from the trial attorney's office shall attend, who is fully familiar with the facts of the case and has full authority to settle and who has discussed the case thoroughly with the client prior to the settlement conference.

C. **Insurance Claims' Employee**. In any case which requires consent of an insurance carrier to settle, an employee of the insurance carrier, who is fully familiar with the case and who has full authority to settle, shall be personally present. A claims adjuster retained only for the purpose of attending the settlement conference will not be acceptable. If the insurance carrier has no claims office located in California, and the court has been so notified pursuant to these rules, the personal attendance of an employee of the carrier is not required; provided, however, an employee of the insurance carrier with full authority to settle shall be immediately available by telephone until released by the court, regardless of the time zone.

D. **Consent of Others**. Where the consent of a spouse, business partner or other person is necessary to achieve settlement, even though this person is not a named party, every reasonable effort shall be made to either secure the attendance of such person at the settlement conference or have that person immediately available by telephone until released by the court.

E. **Structured Settlements for Minors**. In any case involving possible settlement for the benefit of a minor, where the settlement value might reasonably exceed $25,000.00, the defendant seeking settlement with the minor shall bring to the settlement conference, or, throughout the settlement conference shall have immediate access to, a person qualified to compute present values under a structured settlement.

F. **Excused Attendance**. Subject to the above the court will not excuse parties, attorneys, or insurance carrier employees from required attendance except upon a timely showing of good cause by written declaration.

G. **"Full Authority to Settle Defined**. In the case of a plaintiff or cross-complainant, "full authority" to settle means the attendee shall have the individual discretion and authority to negotiate, without consultation with others, and dismiss the complaint or cross-complaint in return for no consideration from the defendant or cross-defendant. In the case of a defendant or cross-defendant, "full authority" to settle means the attendee shall have the individual discretion and authority to negotiate, without consultation with others, and pay the highest demand made to date by the plaintiff or cross-complainant.

In the case of public entity parties whose elected bodies (e.g., City Council, Board of Supervisors) must approve a settlement, the attendee must be an authorized

representative of the public entity who is fully informed as to the parameters under which the entity will approve a settlement. **(Rule 2.5.5 renumbered effective January 1, 2006; adopted as Rule 8.5 effective January 1, 2005)**

2.5.6 Settlement Conference Statement

A. Each party shall mail to the Presiding Judge and serve on all parties a settlement conference statement, in pleading or letter form, preferably at least ten (10) days prior to the settlement conference, but in no event later than five (5) court days prior to the settlement conference. Settlement conference statements will not be filed or kept in the court file, and must be submitted anew for each additional settlement conference.

B. In addition to the subject matter required by Rule 3.1380(c) of the California Rules of Court, the settlement conference statement shall contain:

1. The names of parties and their attorneys.

2. Whether or not an insurance carrier employee is required to be personally present, and, if so, the identity of the carrier.

3. Whether or not a board, council or other committee must approve of settlement, and, if so, the identity of that body.

4. Whether or not the consent of a person who is not a named party is necessary to achieve settlement, and, if so, the identity of that person.

5. The fact and results of compliance with Rule 2.5.2 and the results of prior mediation or arbitration.

6. Prior settlement negotiations.

7. Code of Civil Procedure § 998 demands.

8. Whether or not further discover contemplated, and, if so, a description of it. **(Effective July 1, 2007; Rule 2.5.6 renumbered effective January 1, 2006; adopted as Rule 8.6 effective July 1, 1999)**

2.5.7 Further Settlement Conferences Before Trial

To ensure a meaningful settlement conference prior to trial, the court may set the matter for further settlement conferences prior to the date set for trial, or, with the consent of the Presiding Judge, may remove the case from the trial calendar and order the parties to obtain a new settlement conference and trial date. **(Rule 2.5.7 renumbered effective January 1, 2006; adopted as Rule 8.7 effective January 1, 1997)**

2.5.8 Mandatory Settlement Conferences at Trial Readiness Hearing

All parties to Unlimited and Limited Civil Cases for which a Trial Readiness Hearing has been calendared are required to attend a mandatory settlement conference at the time and place of the Trial Readiness Hearing (see Local Rule 2.6.2). The settlement conference shall be subject to the provisions of Local Rule 2.5.5. **(Effective January 1, 2009; Rule 2.5.8 renumbered effective January 1, 2006; adopted as Rule 8.8 effective January 1, 2005)**

(Rule 2.5 renumbered effective January 1, 2006; adopted as Rule 8 effective July 1, 1992

RULE 2.6 TRIAL READINESS

2.6.1 Meet and Confer

In all civil cases, except short cause cases, the attorneys for the parties shall meet and confer at least five (5) days prior to the date set for trial in order to accomplish the following:

A. All in limine motions and motions for judgment on the pleadings shall be in writing and exchanged by the parties. The trial court will not hear oral in limine motions or those not exchanged except for good cause shown.

B. If a jury has been requested, the parties shall prepare and exchange proposed jury instructions and shall prepare a jointly signed neutral statement of the case.

C. If a jury has not been requested, the parties shall prepare and exchange trial briefs. The trial court will not accept trial briefs not exchanged except for good cause shown.

D. The parties shall identify and list the proposed exhibits, and exchange such lists.

E. The foregoing papers shall be submitted to the trial judge at trial readiness. **(Effective July 1, 2011; Rule 2.6.1 renumbered effective January 1, 2006; adopted as Rule 9.1 effective January 1, 1998)**

2.6.2 Trial Readiness Hearing

A. Except for short cause cases, the Presiding Judge shall set and conduct a trial readiness hearing on the Friday prior to the date set for trial. The Presiding Judge, in his or her discretion, may excuse a case from the trial readiness hearing.

B. The attorney trying the case is required to be personally present at this hearing. In the event the trial attorney has a conflict preventing his or her presence, the trial attorney must make arrangements to have another attorney present, who is familiar with the case and its state of readiness for trial, and who has authority to confirm and/or continue the trial date.

C. Any party may appear telephonically with prior approval of the assigned department.

D. Unless otherwise ordered by the Court, the parties shall provide the Court with the following documents at the trial readiness hearing: Motions in limine, motions for judgment on the pleadings, proposed jury instructions, the joint neutral statement of the case, trial briefs, an exhibit list and a witness list. **(Effective July 1, 2011; Rule 2.6.2 renumbered effective January 1, 2006; adopted as Rule 9.2 effective July 1, 2000)**

(Rule 2.6 renumbered effective January 1, 2006; adopted as Rule 9 effective July 1, 1992)

RULE 2.7 EX PARTE APPLICATIONS

2.7.1 Format and Filing

A. All applications for ex parte orders failing to comply with Rules 3.1200 through 3.1207 of the California Rules of Court will be rejected. Parties making ex parte applications shall obtain a date and time for the hearing of the application from the Clerk (Civil Calendar Division).

B. The court requests that the party seeking an ex parte order submit the application and all supporting papers and fees to the Clerk for filing not later than 2:00 p.m. on the day preceding the hearing, if the hearing is set in the morning, and not later than 9:00 a.m. on the date of the hearing, if the hearing is set in the afternoon. **(Effective July 1, 2008; Rule 2.7 renumbered effective January 1, 2006; adopted as Rule 10 effective July 1, 2000)**

2.7.2 Cases in Which Hearings Not Required

An ex parte application will be considered without a hearing in the following cases:

1. Application to file a memorandum of points and authorities in excess of the applicable page limit;

2. Stipulation by the parties for an order;

3. Application for appointment of a guardian ad litem in a civil case;

4. Application for an order extending time to serve pleading;

5. Application to serve by publication;

6. Extension of time by the court pursuant to the Superior Court of Fresno County, Local Rules, rule 2.1.6;

7. Motion to continue trial pursuant to the Superior Court of Fresno County, Local Rules, rule 2.1.10;

8. Application to substitute Doe under CCP 474. **(Effective July 1, 2008, New)**

RULE 2.8 MISCELLANEOUS CIVIL RULES

2.8.1 Civil Jury Fees

A. Trial by jury shall be deemed waived unless jury fees are deposited no later than twenty-five (25) days prior to the trial in any case not entitled to priority setting, or deposited five (5) days prior to trial in any unlawful detainer case or other case entitled to priority setting.

B. Should any party demanding jury trial fail to deposit required fees, the Clerk will notify all other parties who have not previously waived trial by jury. Any such party may preserve its right to trial by jury by depositing the required fees within five (5) court days of mailing of the Clerk's notice.

C. Failure by any party to deposit jury fees as required herein shall constitute waiver of trial by jury. **(Rule 2.8.1 renumbered effective January 1, 2006; adopted as Rule 11.1 effective January 1, 1997)**

2.8.2 Use of Interpreters

Interpreters will not be provided for civil or small claims matters, unless otherwise ordered by the court. Upon request, the Clerk will provide the names of authorized interpreters with whom a party may make arrangements for interpreting services, or may refer the party to the court's interpreter coordinator. Any party requiring the services of an interpreter is responsible for arranging and paying for the services of such interpreter unless otherwise ordered by the court. **(Rule 2.8.1 renumbered effective January 1, 2006; adopted as Rule 11.2 effective January 1, 1997)**

2.8.3 Attorney's Fees

A. Attorney's fees in default cases, when allowable in designated cases, shall be fixed in accordance with Appendix A1, except as otherwise ordered by the court.

B. When an attorney is appointed to represent a party in designated cases, the attorneys' fees are governed by the Fresno County Courts Appointed Counsel/Expert General Claim Processing Practices (FCCAC/EGCPP), a copy of which is available from the Clerk. **(Rule 2.8.3 renumbered effective January 1, 2006; adopted as Rule 11.3 effective January 1, 2005)**

2.8.4 Compromise of Claims of Minors or Incompetent Persons

A. Petitions to compromise the claims of minors or incompetent persons shall be made on the appropriate Judicial Council forms, in accordance with Rule 7.950, et seq., of the California Rules of Court. Such petitions must be filed with the court at least ten (10) court days prior to the hearing date. If the original petition is denied without

prejudice and the petitioner wishes to renew the request, the petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition.

B. If a petition to withdraw from deposit is made:

1. The certificate of deposit must have been completed and filed prior to filing of the petition for withdrawal.

2. In the event the petition to withdraw funds is based upon the denial of a public agency providing public assistance to provide funds because of the existence of the account, a copy of the written notice from the agency concerned, so stating, shall be attached to the petition.

C. If an order for withdrawal of funds is made, within fifteen (15) days from the date of the order, a declaration of expenditures made with the funds shall be filed with the Clerk.

D. Attorney's fees, if awarded, shall be awarded in conformity with Rule 7.955 of the California Rules of Court. In computing fees, parents claiming reimbursement for medical and other expenses shall pay their proportionate share of the attorneys' fees, except in cases of hardship. **(Effective July 1, 2007; Rule 2.8.4 renumbered effective January 1, 2006; adopted as Rule 11.4 effective July 1, 2002)**

2.8.5 Court Reporter Fees

A. In any civil case in which a trial or hearing is expected to last more than one (1) hour, but not more than four (4) hours, and official reporting services (by court reporter or electronic recording) are required, the parties shall deposit with the Clerk their pro rata shares of the fee for one-half (1/2) day of official reporting services.

B. In any civil case in which a trial or hearing is expected to last more than four (4) hours and official reporting services are required, the parties shall deposit with the Clerk their pro rata shares of the fee for one (1) full day of official reporting services.

C. The fee shall be deposited not later than the conclusion of each day's court session. The fee for any subsequent day of the trial or hearing shall be deposited with the Clerk not later than the conclusion of each day's court session.

D. Attorneys must be prepared to produce receipts for fees on demand of the court or the trial or hearing may not proceed at the discretion of the Court. **(Effective January 1, 2008; Rule 2.8.5 renumbered effective January 1, 2006; adopted as Rule 11.5 effective July 1, 2000)**

2.8.6 Filing Limited Civil Cases in Proper Court Division

A. Unless otherwise ordered, limited civil cases, including unlawful detainer cases, shall be filed and litigated in the division of the court designated by this rule. The location that determines the proper venue of a case (e.g., the place of defendant's

residence, the place the contract was entered into, etc.) shall also determine the proper court division in which the case is to be filed. If the case is filed in a division other than that specified in this rule, it may be transferred to the proper division on the court's own motion or on motion of any party.

B. The proper court division for the filing of the case shall be determined by the zip code covering the location on which venue is based. A list of the zip codes and the corresponding court divisions in which cases are to be filed may be obtained from the Clerk's Office at any division of the court or may be accessed on the court's website. **(Effective January 1, 2007; Rule 2.8.6 renumbered effective January 1, 2006; adopted as Rule 11.6 effective January 1, 2005)**

2.8.7 Firearms Forfeiture Default

On a petition for order of default regarding a firearms forfeiture pursuant to Welfare and Institutions Code § 8102, subdivision (g), the agency seeking the default shall file their petition for default ten (10) court days preceding the date set for the hearing. **(Effective January 1, 2008, New)**

2.8.8 Petitions for Approval of Transfers of Structured Settlements

A. All parties to a petition for approval transferring structured settlement payments must appear at the hearing on such petitions, including the payee and the payee's counsel (if any). The petitioner filing a petition for approval of transfer of any structured settlement payments pursuant to Insurance Code § 10134 et seq. shall include with their petition the following information and documents.

1. The jurisdiction and case number of any other petition by the petitioner seeking approval to purchase any structured settlement payments from the payee;

2. A copy of the entire court file for any prior petition by the petitioner seeking approval for purchase of any structured settlement payments from the payee;

3. A declaration from the payee's counsel wherein he or she provides the total number of and lists all other petitions (along with their case numbers and court) wherein he or she has represented a payee who attempted to sell payments to the same petitioner;

4. A declaration from the payee's attorney listing any professional, financial, or personal relationship with the petitioner's employees or petitioner's counsel, past or present, as well as how counsel first came into contact with the payee if other than by a referral from a bar association as described in the statute;

5. A declaration from the petitioner describing any contacts by its personnel with the payee's counsel, including copies of each written communication;

6. A declaration from any of petitioner's personnel having contact with the payee describing all communications, to include any and all documentation of such communications whether on paper or stored electronically;

7. A declaration from petitioner as to any communications it conducted or facilitated with the annuity issuer, owner, or beneficiary, and a copy of all such communications whether on paper or stored electronically;

8. A declaration from petitioner which includes all documents it plans to or has used with regard to the attempted purchase of any structured settlement payments from the payee, including UCC filings. If such documents exist whether on paper or stored electronically, they are to be attached. **(Effective July 1, 2010, New)**

(Rule 2.8 renumbered effective January 1, 2006; adopted as Rule 11 effective July 1, 1992)

RULE 2.9 UNLAWFUL DETAINER CASES

2.9.1 Case Disposition Time

The court shall endeavor to dispose of all unlawful detainer cases as follows: 90% within thirty (30) days after filing; and 100% within forty-five (45) days after filing. **(Rule 2.9.1 renumbered effective January 1, 2006; adopted as Rule 12.1 effective July 1, 2000)**

2.9.2 Notice of Dismissal Hearing

Approximately two (2) weeks after the filing of the case Clerk will issue a Notice of Dismissal Hearing to plaintiff, designating a date for a Dismissal Hearing that is within 45 days after the filing of the complaint. **(Effective July 1, 2010; Rule 2.9.2 renumbered effective January 1, 2006; adopted as Rule 12.2 effective May 14, 2001)**

2.9.3 Service and Filing of Proof of Service

Within fifteen (15) days from the date the unlawful detainer complaint was filed, plaintiff shall serve all named defendants and file proof of service with the court or shall file an application for a posting order, unless a responsive pleading has been filed. **(Rule 2.9.3 renumbered effective January 1, 2006; adopted as Rule 12.3 effective May 14, 2001)**

2.9.4 Request to Set Case for Trial

Within twenty-five (25) days after the date the unlawful detainer complaint was filed, plaintiff shall file a Request to Set Case for Trial, unless there has been a final disposition of the case or a notice of settlement or stay has been filed. The Request to Set Case for Trial shall be submitted on a form which is available from the Clerk's Office or on the court's website. By filing a Request to Set Case for Trial a party represents

that the case is at issue and will be ready to proceed to trial on the date assigned. **(Effective July 1, 2010; Rule 2.9.4 renumbered effective January 1, 2006; adopted as Rule 12.4 effective May 14, 2001)**

2.9.5 Dismissal Hearing

A. Plaintiff shall attend the Dismissal Hearing, either in person or by telephonic appearance. At the hearing, the status of the case will be discussed, including whether the case should be set for trial or dismissed. Appropriate orders will be made.

B. Failure of the plaintiff to appear may result in dismissal or the case.

C. A dismissal hearing will be taken off calendar if a trial date has been set, a Request to Set Case for Trial has been filed, or there has been a final disposition of the case. A dismissal hearing will be continued if a notice of settlement or stay has been filed with the court prior to the date of the dismissal hearing. If any of these conditions exists, it is the responsibility of the parties to notify the TCDR Clerk in writing and ask that the Conference be taken off calendar or continued. **(Effective July 1, 2010; Rule 2.9.5 renumbered effective January 1, 2006; adopted as Rule 12.5 effective May 14, 2001)**

2.9.6 Assignment of Case for Trial

If the Request to Set Case for Trial complies with these rules in all respects, the Clerk shall assign the case for trial within twenty (20) days after the date the Request to Set Case for Trial was filed, and mail notice of the trial date to the parties at least ten (10) days before the trial date. **(Effective July 1, 2010; Rule 2.9.6 renumbered effective January 1, 2006; adopted as Rule 12.6 effective May 14, 2001)**

2.9.7 Hearing to Prove Damages

A. After a Clerk's judgment for restitution of the premises has been entered, a plaintiff seeking to recover money damages shall set the case for a hearing to prove damages within six (6) months after the judgment is entered.

B. A personal appearance will not be required if a declaration is submitted pursuant to § 585(b) and (d) of the Code of Civil Procedure. **(Rule 2.9.7 renumbered effective January 1, 2006; adopted as Rule 12.7 effective July 1, 2000)**

2.9.8 Undertaking for Immediate Possession of Premises

Unless otherwise ordered by the court, the minimum amount of undertaking required for an order for immediate possession of premises, pursuant to § 1166a of the Code of Civil Procedure, shall be ten (10) times the amount of monthly rental, but not less than $500.00. **(Rule 2.9.8 renumbered effective January 1, 2006; adopted as Rule 12.8 effective July 1, 2000)**

2.9.9 Judgment

When a judgment for restitution or possession of the premises under Code of Civil Procedure § 1169 or 1174 is prepared and submitted by plaintiff, it shall describe with reasonable certainty the real property that is the subject of the judgment, giving its street address (including the zip code), if any, or other common designation, if any. **(Rule 2.9.9 renumbered effective January 1, 2006; adopted as Rule 12.9 effective January 1, 2003)**

2.9.10 Notice of Restricted Access

Each plaintiff who files an action for Unlawful Detainer, for which a Notice of Restricted Access must be mailed to the defendants pursuant to Code of Civil Procedure § 1161.2(c), must provide to the court at the time of filing the action, (1) a separate stamped, legal-size envelope addressed to each defendant named in the action at the address provided in the complaint, and (2) a stamped, legal-size envelope addressed to "All Occupants" at the subject premises. **(Rule 2.9.10 renumbered effective January 1, 2006; adopted as Rule 12.10 effective January 1, 2005)**

(Rule 2.9 renumbered effective January 1, 2006; adopted as Rule 12 effective July 1, 1992)

RULE 2.10 SMALL CLAIMS CASES

2.10.1 Case Disposition Time

The court shall endeavor to dispose of all small claims cases as follows: 90% within seventy (70) days after filing; and 100% within ninety (90) days after filing. **(Rule 2.10.1 renumbered effective January 1, 2006; adopted as Rule 13.1 effective July 1, 2000)**

2.10.2 Unserved Defendants

A. If proof of service on the defendant in a small claims case has not been filed by the date set for trial, the case will not be heard on that date. The court or the Clerk may reset the case for trial.

B. If more than one defendant is named in the plaintiff's claim, and proof of service as to some, but not all, of the defendants has been filed prior to the date set for trial, the court may continue the trial of the case as provided in § 116.570 of the Code of Civil Procedure, or trial may proceed only as to those defendants who have been served. The court or the Clerk may reset the case for trial as to any remaining defendants. **(Rule 2.10.2 renumbered effective January 1, 206; adopted as Rule 13.2 effective July 1, 2000)**

2.10.3 Untimely Small Claims Appeals

No notice of appeal from a small claims judgment shall be accepted for filing after the statutory period for filing such an appeal has expired, unless a writ of mandate ordering the Clerk to file the notice of appeal has been issued. **(Rule 2.10.3 renumbered effective January 1, 2006; adopted as Rule 13.3 effective July 1, 2001)**

2.10.4 Filing Small Claims Cases in Proper Court Division

Unless otherwise ordered, small claims cases shall be filed and litigated in the division of the court designated by Rule 2.8.6. If the case is filed in a division other than that specified in this rule, it may be transferred to the proper division on the court's own motion or on the request of any party. **(Rule 2.10.4 renumbered effective January 1, 2006; adopted as Rule 13.4 effective July 1, 2003)**

(Rule 2.10 renumbered effective January 1, 2006; adopted as Rule 13 effective July 1, 1992)

(Chapter 2 amended effective January 1, 2006; adopted as II effective July 1, 1992)

RULE 2.11 CASES INVOLVING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

2.11.1 Assignment of CEQA Cases

A. **Judge for All Purposes**. Unless otherwise specified in these rules or ordered by the Presiding or Supervising Judge, all CEQA cases will be assigned to a single judge for all purposes, including trial.

B. **Notice of Assignment**. A Notice of Assignment indicating the name and department number of the assigned judge, as well as the assigned judge's departmental schedule for noticed motions and ex parte applications, will be prepared by the court.

C. **Service of Notices**.

1. Service of Notice by Clerk

The clerk will serve the Notice of Assignment either by mail on counsel of record for petitioner and on any self-represented petitioner, or personally on petitioner or petitioner's representative at the time the petition is filed.

2. Service of Notice by Petitioner

The petitioner must serve the Notice of Assignment and the most recent case management conference notice on each named respondent or defendant either when that respondent or defendant is served with the summons and complaint, or as soon as petitioner receives the notice, whichever is later, and file a proof of service thereof.

D. **Designation of Assigned Judge in Subsequent Documents**. After a CEQA case is assigned, all subsequent documents must state on the face page, under the case number, the following:

ASSIGNED FOR ALL PURPOSES TO:
JUDGE [insert name]
DEPARTMENT [insert number]

E. **Unavailability of Assigned Judge.** In the event of the temporary unavailability of the judge assigned to a CEQA case for all purposes, another judge may be assigned to hear matters in that case. Until and unless the court issues an order or notice revoking the existing single assignment or assigning a new judge for all purposes, any hearing that may take place before another judge does not affect the status of the case as originally assigned for all purposes. **(Effective July 1, 2011, New)**

2.11.2 Preparation of the Administrative Record

A. **Preparation by the Public Agency**. Within twenty (20) days after receipt of a statutory request that the public agency prepare the record of proceedings, the public agency responsible for such preparation must personally serve on petitioner a preliminary cost notification of the estimated cost of preparation, stating the agency's normal costs per page, other reasonable costs, if any, the agency anticipates, and the likely range of pages. This preliminary cost notification must also state, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, must designate the contact person(s) responsible for identifying the agency personnel or other person(s) having custody of those documents, and must provide a listing of dates and times when those documents will be made available to petitioners or any party for inspection during normal business hours as the record is being prepared. This preliminary cost notification must be supplemented by the agency from time to time as additional documents are located or determined appropriate to be included in the record.

B. **Notification that Petitioner Elects to Prepare the Record**. Upon receipt of this preliminary cost notification, petitioners may elect to prepare the record of proceedings themselves provided they notify the agency within five (5) days of such receipt. If petitioners so elect, then within forty (40) days of service of the statutory request that the public agency prepare the record of proceedings, petitioner must prepare and serve on all parties a detailed document index listing the documents proposed by petitioners to constitute the record of proceedings. Within seven (7) calendar days of receipt of the detailed document index, the agency, or other parties if any, must serve the petitioners and all parties, with a document notifying them of any document or item that such parties contend should be added to, or deleted from, the record of proceedings. The agency must promptly notify petitioners of any required photocopying procedures or other conditions with which petitioners must comply in their preparation of the record. Service of the foregoing shall conform to the Code of Civil Procedure, Part 2, Title 14, Chapter 5, § 1010 et seq.

C. **Notice by Agency of Proposed Record**. If petitioners do not elect to prepare the record of proceedings themselves, then within forty (40) days after service of the statutory request to prepare the record of proceedings, the agency must prepare and serve on the parties a detailed document index listing the documents proposed by the agency to constitute the record and provide a supplemental estimated cost of preparation. Within seven (7) calendar days of receipt of the detailed document index, petitioners, or other parties if any, must serve the agency and all parties with a

document notifying the agency of any document or item that such parties contend should be added to, or deleted from, the record. Service of the foregoing shall conform to the Code of Civil Procedure, Part 2, Title 14, Chapter 5, § 1010 et seq. **(Effective July 1, 2011, New)**

2.11.3 Format of the Administrative Record

A. **Binding and Length of Volumes of the Administrative Record**. The administrative record must be provided in one or more volumes of not more than 300 pages that are separately bound. The pages of the administrative record must be numbered consecutively and bound on the left margin. The cover of each volume of the records must be the same size as its pages and contain the same material as the cover of a brief, but must be labeled "Administrative Record".

B. **Index**. At the beginning of the first volume of the administrative record, there must be an index of each paper or record in the order presented in the record referring to each paper or record by title or description and the volume and page at which it first appears.

C. **Organization**. The administrative record must be organized in the following order:

1. The Notice of Determination;

2. All resolutions or ordinances adopted by the lead agency approving the project or required by law;

3. The Draft or revised Draft Environmental Impact Report and initial study;

4. The comments received on and the responses to those comments prepared for the Draft Environmental Impact Report or Negative Declaration, including any modification of the environmental documents and project made after the comment period;

5. The remainder of the Final Environmental Impact Report, including all appendices and other materials;

6. The staff reports prepared for the approving bodies of the lead agency;

7. Transcripts or minutes of all hearings; and

8. The remainder of the administrative record.

D. **Electronic Copy**. The administrative record must also be submitted in a *searchable*, .pdf file format. Indexing and organization should mirror the paper format.

The party lodging the administrative record should simultaneously lodge two copies of the electronic administrative record – one for the court and one for research. **(Effective July 1, 2011, New)**

2.11.4 Disputes Regarding the Contents of the Administrative Record

Once the administrative record has been filed, any disputes about its accuracy or scope should be resolved by appropriate noticed motion. For example, if the agency has prepared the administrative record, petitioners may contend that it omits important documents or that it contains inappropriate documents; if the petitioners have prepared the record, the agency may have similar contentions. A motion to supplement the certified administrative record with additional documents or to exclude certain documents from the record may be noticed by any party and should normally be filed concurrently with the filing of petitioner's opening memorandum of points and authorities in support of the writ. Opposition and reply memoranda on the motion should normally be filed with the opposition and reply memoranda, respectively, regarding the writ. The motion should normally be calendared for hearing concurrently with the hearing on the writ. **(Effective July 1, 2011, New)**

2.11.5 Briefing Schedule and Length of Memoranda

A. Parties requesting or applying for a hearing in a case brought under the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.) shall reserve with the law and motion clerk a date and time for hearing on the request or application.

B. Unless otherwise ordered by the court, the following briefing schedule must be followed:

1. Petitioner must file with the Civil Court Clerk's Office and concurrently a chambers copy and a research copy in the designated CEQA department an opening memorandum of points and authorities in support of the petitioner within thirty (30) days from the date the administrative record is served.

2. Respondent and Real Party in Interest must file with the Civil Court Clerk's Office and concurrently a chambers copy and a research copy in the designated CEQA department opposition points and authorities, if any, within thirty (30) days following service of petitioner's memorandum of points and authorities.

3. Petitioner has twenty (20) days from service of the opposition's points and authorities to file with the Civil Court Clerk's Office and concurrently a chambers copy and a research copy in the designated CEQA department a reply memorandum of points and authorities.

4. Service of the briefs shall conform to the Code of Civil Procedure, Part 2, Title 14, Chapter 5, § 1010 et seq.

5. California Rule of Court 3.1113 applies to the page limit in CEQA actions. Should the parties desire to submit longer memoranda, they must first file an application with the court stating good cause for exceeding that limit. If the pages exceed that in Rule 3.1113 without the court's prior approval, any pages in excess of the statutory limit will not be considered. **(Effective July 1, 2011, New)**

2.11.6 Settlement Meeting

The initial notice must provide that, if the parties agree, the first settlement meeting will be continued so as to take place no later than thirty-five (35) days after the administrative record is served. **(Effective July 1, 2011, New)**

2.11.7 Statement of Issues

The statement of issues must identify those portions of the administrative record that are directly related to the contentions and issues remaining in controversy. **(Effective July 1, 2011, New)**

2.11.8 Trial Notebook

Petitioner must prepare a trial notebook that must be filed with the designated CEQA department fourteen (14) days after lodging the Administrative Record. The trial notebook must consist of the petition, all answers, the briefs, any motions set to be heard at trial, the statement of issues, and any other documents agreed upon by the parties.

The trial notebook must contain a table of contents, tabbed sections consistent with those outlined above and an index of the documents in the notebook referencing page numbers. The notebook's pages should be sequentially numbered in the lower right-hand corner of each page and be bound in a "D-ring" binder no more than three (3) inches thick. Should documents dictate, further notebooks with the same requirements above should be used.

A court copy and a research copy of the above must be provided simultaneously. **(Effective July 1, 2011, New)**

(Rule 2.11, New effective July 1, 2011)

CHAPTER 3. CRIMINAL RULES

RULE 3.1 GENERAL CRIMINAL RULES

3.1.1 Request for Warrants – District Attorney's Obligation to Include Warrant File Numbers on Complaints and Informations

A. During non-court hours all requests for search or arrest warrants in all cases shall be submitted to the designated duly judge.

B. The District Attorney shall, in all cases where a search warrant was executed and returned, include the Court's Warrant File number, or numbers, in brackets, below the Case Number:

Case No.: F09000001
[W0900002]

(Effective January 1, 2010, Rule 3.1.1 renumbered effective January 1, 2006; adopted as Rule 14.1 effective July 1, 2000)

3.1.2 Release on Own Recognizance

Motions regarding release on own recognizance or for bail modification prior to the first court appearance should be made, in all cases, before the arraignment department judge or commissioner during normal court hours. After the first court appearance, such motions shall be made in the arraignment department or the department assigned to hear such motions, in open court. **(Rule 3.1.2 renumbered effective January 1, 2006; adopted as Rule 14.2 effective July 1, 2000)**

3.1.3 Motions Made for Release on Own Recognizance or Bail Modification

A. When a motion for release on own recognizance or bail modification has been made to the court, and granted in whole or in part, or granted conditionally or with limiting terms, and a subsequent motion is made by the same party in the same case for a similar order upon materially changed circumstances, the subsequent motion shall be accompanied by a disclosure that:

1. A prior motion has been made,

2. When and to what judge it was made,

3. What the nature of the motion was,

4. What order or decision was made thereon, and

5. What materially changed circumstances are claimed to be shown.

B. Any order made on subsequent applications failing to comply with these requirements may be vacated or set aside on ex parte application or on the court's own motion at any time. **(Rule 3.1.3 renumbered effective January 1, 2006; adopted as Rule 14.3 effective July 1, 2000)**

3.1.4 Defendant's Clothing

The attorney representing a defendant in the custody of the Sheriff in a criminal matter shall make timely and appropriate arrangements to ensure that the defendant is suitably dressed for trial before the case is assigned to a trial department. **(Rule 3.1.4 renumbered effective January 1, 2006; adopted as Rule 14.14 effective July 1, 2000)**

3.1.5 Continuances

A. All criminal cases set for trial will proceed to trial on the date scheduled in the absence of good cause. No continuances will be granted unless the court is presented convincing proof of good cause for a continuance in accordance with Penal Code § 1050. A stipulation of counsel to a trial continuance does not necessarily constitute good cause.

B. Motions for trial continuances shall be made in writing and served in accordance with Penal Code § 1050(b), unless the necessary showing is made under § 1050(c).

C. In felony cases after arraignment on the information or indictment, all motions for trial continuances shall be made to the judge in the Designated Department.

D. If, on the date set for trial, counsel is actually engaged in the trial of another case, the case scheduled for trial will trail from day to day until completion of the trial in the other case, or to such other date as set by the court under § 1050(c). **(Effective July 1, 2007; Rule 3.1.6 (now 3.1.5) renumbered effective January 1, 2006; adopted as Rule 14.6 effective July 1, 2000)**

3.1.6 Habeas Corpus Writs

A. All petitions for writ of habeas corpus shall be prepared as specified by the California Rules of Court and filed with the Clerk. Unless otherwise directed by the court, each petition will be assigned a unique case number by the Clerk and immediately forwarded to the research staff for review.

B. Once this initial review has been completed, the petition will be sent to the designated judge. Unless otherwise specified by the Presiding Judge, all such petitions will be acted upon by the judge assigned to hear criminal law and motion matters. Action on the petition will be taken in accordance with the provisions of the California Rules of Court.

C. Priority will be given to emergency petitions, i.e., those alleging that time is of the essence to protect the petitioner from death or permanent disability. Ex parte communications are discouraged.

D. Petitions that do not comply with the California Rules of Court and these rules may be summarily denied. Habeas Corpus petitions are not a substitute for a timely appeal, and should not be sought until all legal and administrative remedies have been exhausted.

E. The repeated filing of unmeritorious petitions may be deemed an abuse of process, and may subject the petitioner to appropriate sanctions as ordered by the court. **(Effective July 1, 2007; Rule 3.1.7 (now 3.1.6) renumbered effective January 1, 2006; adopted as Rule 14.7 effective July 1, 2000)**

3.1.7 Writs of Mandate and Prohibition

A. Petitions for extraordinary relief by way of mandamus and/or prohibition in misdemeanor or traffic cases shall be filed and processed in the Appellate Division. Such relief should not be sought until all existing legal and administrative remedies have been exhausted.

B. Petitions for extraordinary relief by way of mandamus and/or prohibition in felony cases, which challenge a ruling by a magistrate made prior to defendant being held to answer, shall be filed and processed in the underlying felony criminal case. The supervising judge of the Criminal Division will then assign the petition to a single superior court judge for determination. In the event the supervising judge of the Criminal Division acted as the magistrate whose ruling is being challenged the assignment of the petition shall be made pursuant to rule 3.4.2.

C. When an emergency situation exists, it is the responsibility of the petitioner to clearly indicate the nature of the emergency in the petition, and to also inform the Clerk at the time the petition is filed. For the purposes of these petitions, emergency situations include actions in which time is of the essence to prevent denial of a fundamental constitutional right or undue hardship.

D. Petitions that are defective, incomplete, lack adequate supporting documentation, or fall outside the scope of the court's jurisdiction may be summarily denied. Abuse of the writ process may subject the petitioner to appropriate sanctions. **(Effective January 1, 2010; Rule 3.1.8 (now 3.1.7) renumbered effective January 1, 2006; adopted as Rule 14.8 effective July 1, 2003)**

3.1.8 Attorney, Expert and Investigation Fees

The fees for an attorney appointed to represent a defendant in a criminal case, the investigator and interpreter fees and fees for medical, psychological and psychiatric services are governed by the Fresno County Courts Appointed Counsel/Expert General Claim Processing Practices, a copy of which is available from the Clerk. **(Effective July 1, 2007; Rule 3.1.9 (now 3.1.8) renumbered effective January 1, 2006; adopted as Rule 14.9 effective July 1, 2000)**

3.1.9 Retention of Exhibits Prior to Final Determination of Action or Proceeding

A. Clerk to Retain Custody of Exhibits: The Clerk shall retain custody of any exhibit introduced into evidence in a criminal proceeding, including the preliminary hearing, until the final determination or dismissal of the action or proceeding, or as otherwise required by law. No exhibit, having been introduced into evidence, may be returned absent a court order, consistent with Penal Code § 1417.2.

B. Hazardous Materials: Hazardous materials may only be brought to the courtroom or received into evidence consistent with Penal Code § 1417.3(b). **(Effective January 1, 2009, New)**

3.1.10 Sound and/or Video Recordings to be Offered as Evidence in Criminal Cases

Any party intending to offer any sound and/or video recording in evidence shall lodge with the Court on the first day of trial a copy converted to a format compatible with the equipment used by the Court. **(Effective July 1, 2010, New)**

3.1.11 Penal Code Section 1203.4 or 1203.4a

A. **Petition for Dismissal.** Submission of a petition for dismissal, pursuant to Penal Code § 1203.4 or 1203.4a, will require that the defendant seeking such relief also submit with their petition a completed income and expense declaration, providing the information required on Judicial Council form MC-210.

Failure to include the required income and expense declaration will result in summary denial of the petition, without prejudice.

B. **Proof of Service.** All petitions for dismissal, including those filed by Fresno County Probation on behalf of a defendant, submitted for filing pursuant to Penal Code § 1203.4 or Penal Code § 1203.4a, as to an infraction shall include proof of service of the petition on the Office of the District Attorney. (Pen. Code §§ 1203.4, subd. (e) & 1203.4a, subd. (d).)

Failure to provide proof of service of the petition on the Office of the District Attorney, at the time of filing, will result in summary denial of the petition, without prejudice. **(Effective July 1, 2011, New)**

(Rule 3.1 renumbered effective January 1, 2006; adopted as Rule 14 effective July 1, 1992)

RULE 3.2 MISDEMEANOR CASE RULES

3.2.1 Misdemeanor Filings

The court shall endeavor to dispose of misdemeanor cases as follows: 90% within thirty (30) days after the defendant's first court appearance, 98% within ninety (90) days after the defendant's first court appearance, and 100% within 120 days after

the defendant's first court appearance. **(Rule 3.2.1 renumbered effective January 1, 2006; adopted as Rule 15.1 effective July 1, 2000)**

3.2.2 Case Assignment

Upon the filing of a misdemeanor action the case is assigned to a specific department. The judge normally assigned to that department is the judge that will preside over that case and is expected to preside over all remaining aspects of the case, including motions and trial. This assignment is an assignment for all purposes. **(Effective January 1, 2010, New)**

3.2.3 Continuances

All motions for a continuance of a trial shall be made in the assigned trial department. **(Effective January 1, 2010; Rule 3.2.2 (now 3.2.3) renumbered effective January 1, 2006; adopted as Rule 15.2 effective July 1, 2000)**

3.2.4 Misdemeanor Pretrial Hearing

A. **Pretrial Hearing**. At such time as designated by the court, a pretrial hearing (formerly jury motion) will be held. Unless otherwise ordered by the court, the defendant shall personally appear at the hearing, unless appearing by counsel.

B. Duties at Pretrial Hearing. All motions for continuance, waiver of jury, change of plea or other procedural matters shall be presented at the hearing. If the case is not settled at the hearing, the court may order the defendant to appear at the trial readiness hearing prior to the trial date. On the date set for trial there shall be no continuances or other delay of the trial, except on a showing of good cause based on facts not known by the moving party at the time of the pretrial hearing. **(Effective January 1, 2010; Rule 3.2.3 (now 3.2.4) renumbered effective January 1, 2006; adopted as Rule 15.3 effective July 1, 2000)**

3.2.5 Misdemeanor Trial Calendar

Misdemeanor trials shall be called at 1:30 p.m. on Wednesday. Trial counsel shall appear unless excused by the Court and shall be ready to proceed at the scheduled time. **(Effective January 1, 2010; Rule 3.2.4 (now 3.2.4) renumbered effective January 1, 2006; adopted as Rule 15.4 effective July 1, 2000)**

(Rule 3.2 renumbered effective January 1, 2006; adopted as Rule 15 effective July 1, 1992)

RULE 3.3 MOTIONS AND HEARINGS IN MISDEMEANOR CASES

3.3.1 Assignment of Motions

All motions or other matters not connected directly with trial, including, but not limited to motions to suppress, to amend the accusatory pleading, for discovery, dismissal, sanctions, interpreters, or substitution of counsel shall be made in the assigned department. **(Rule 3.3.1 renumbered effective January 1, 2006; adopted as Rule 16.1 effective July 1, 2000)**

3.3.2 Filing of Motions

A. Absent an order shortening time, or provided by statute, motions in misdemeanor cases shall be filed in writing no later than ten (10) court days before the hearing.

B. Motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof and a memorandum of points and authorities. Proof of service shall be filed no later than five (5) court days prior to the date of the hearing.

C. All opposition papers shall be filed no later than five (5) court days prior to the hearing, with proof of service on all parties. All reply papers shall be filed no later than two (2) court days prior to the hearing, with proof of service on all parties.

D. Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred to in the pleadings or papers by tab identification. Each exhibit must be separated by a hard 8 ½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. **(Effective January 1, 2012; Rule 3.3.2 renumbered effective January 1, 2006; adopted as Rule 16.2 effective July 1, 2000)**

3.3.3 Motions to Suppress Evidence

A. Motions to suppress evidence and all responses shall comply with Penal Code § 1538.5 and controlling case law. (E.g., for searches allegedly conducted without a warrant, see *People v. Williams* (1999) 20 Cal.4th 119 and its progeny.) If any factual assertions are based on cited documentation (such as a police report) and this documentation has not previously been filed with the court, the party making those assertions shall attach a copy of the cited document.

B. Each party is responsible for insuring that its witnesses are present for the hearing. **(Rule 3.3.3 renumbered effective January 1, 2006; adopted as Rule 16.3 effective July 1, 2004)**

3.3.4 Renewal of Motions

Motions decided prior to trial shall not be renewed unless the motion could not, with due diligence, have been made earlier. Any renewed motion shall be based upon grounds of new evidence which could not, with due diligence, have been discovered earlier, or if the original motion as denied without prejudice and leave to renew has been granted by the court. **(Rule 3.3.4 renumbered effective January 1, 2006; adopted as Rule 16.4 July 1, 2000)**

(Rule 3.3 renumbered effective January 1, 2006; adopted as Rule 16 effective July 1, 1992)

RULE 3.4 FELONY CASE RULES

3.4.1 Felony Filings

The court shall endeavor to dispose of felony filings (by plea, finding of probable cause, or dismissal) excluding murder cases in which the prosecution seeks the death penalty as follows: 90% within thirty (30) days after the defendant's first court appearance, 98% within forty-five (45) days after the defendant's first court appearance, and 100% within ninety (90) days after the defendant's first court appearance. **(Rule 3.4.1 renumbered effective January 1, 2006; adopted as Rule 17.1 effective July 1, 2000)**

3.4.2 Designated Department

Unless otherwise assigned by the Presiding Judge, all proceedings in each felony case, from arraignment through settlement conference shall be heard in one of the felony departments. For each case, the appropriate department shall be known as the "Designated Department." Felony cases shall be assigned to the Designated Department alphabetically by last name of defendant. Multiple defendant cases shall be assigned by last name of the first named defendant. Felony cases from Divisions other than the Central Division shall have the preliminary hearings in those Divisions, but shall be assigned for arraignment on the information, and all subsequent hearings, alphabetically to the Designated Department. **(Effective July 1, 2011; adopted as Rule 3.4.2 effective July 1, 2007)**

3.4.3 Schedule of Hearings

Hearings shall be set in the Designated Departments according to a schedule available from the Clerk's Office, or by order of the court if not specifically noted. **(Effective July 1, 2007, New)**

3.4.4 Certification

A court which has suspended criminal proceedings pursuant to Penal Code § 1368 shall appoint a psychiatrist or licensed psychologist or two such professions in accordance with Penal Code § 1369(a) and refer the matter to the Designated Department. **(Effective July 1, 2007; Rule 3.4.2 (now 3.4.4) renumbered effective January 1, 2006; adopted as Rule 17.2 effective July 1, 2000)**

3.4.5 Preliminary Examinations

Except as provided in Rule 3.4.2A, preliminary examinations shall be calendared in the Designated Department and motions for continuance of a preliminary examination shall be made in the Designated Department. **(Effective July 1, 2007; Rule 3.4.3 (now 3.4.5) renumbered effective January 1, 2006; adopted as Rule 17.3 effective July 1, 2000)**

3.4.6 Trial Setting

A. At the time of the arraignment and plea, the court will set a date for trial within the statutory period. This is the only notice of the trial date that will be given counsel and the defendant.

B. Reciprocal informal discovery, pursuant to Penal Code § 1054, will be ordered at the time of the arraignment. Any additional discovery requests must be made in a duly filed and noticed written motion, complying with all statutory requirements applying to such motions and Rule 3.5.1. **(Effective July 1, 2007; Rule 3.4.5 renumbered effective January 1, 2006; adopted as Rule 17.5 effective July 1, 2000)**

3.4.7 Settlement Conference

A. Trial Confirmations shall be renamed as Settlement Conferences. All felony Settlement Conferences will be set in the Designated Department, on Thursdays. The initial Settlement Conference will be set up two (2) weeks before the date set for trial, or on such other date as set by the Designated Department.

B. Trial attorneys who will try the case shall personally appear at the Settlement Conference. In the event a trial attorney has a conflict preventing that attorney's presence, that attorney shall make arrangements to have another attorney present who is familiar with the case. The appearing defense attorney shall have previously conferred with the client. **(Effective July 1, 2007, New)**

(Rule 3.4 renumbered effective January 1, 2006; adopted as Rule 17 effective July 1, 1992)

RULE 3.5 MOTIONS AND HEARINGS IN FELONY CASES

3.5.1 Motions in General

A. Except for motions to set aside the indictment or information pursuant to Penal Code § 995 and special hearings on motions to suppress under Penal Code § 1538.5, subdivision (i), where a motion to suppress was made at the preliminary hearing, all motions or other matters not connected directly with trial, including, but not limited to, motions to suppress, to amend the accusatory pleading, for discovery, dismissal, sanctions, interpreters, or substitution of counsel shall be made in the Designated Department. Dates and times for hearings shall be cleared with the individual Designated Department, and a cover sheet indicating the pre-approved date shall be attached to the face of the motion.

B. Motions to set aside the indictment or information pursuant to Penal Code § 995, and special hearings on motions to suppress under Penal Code § 1538.5, subdivision (i), where a motion to suppress was made at the preliminary hearing, shall be set in the department of the supervising judge of the Criminal Division at the time designated by that judge for motions. No pre-approval of the date is required. In the event the supervising judge of the Criminal Division acted as the magistrate at the preliminary hearing, the motion to set aside the information, or for renewal of the suppression motion made at the preliminary hearing, shall be set in the Designated Department pursuant to the procedure for other motions set forth in rule 3.5.1A and D.

C. Except as otherwise authorized by the court or required by statute, all motions and accompanying papers must be filed with the Clerk.

D. All motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof, a memorandum of points and authorities, and the face sheet indicating approval by the Designated Department of the dates as required by rule 3.5.1A. All motions shall contain, in the area below the Motion Title of the first page of the filing party's motion, the hearing date, time, and department number, and the filing party's estimate of the overall time required for the hearing of the matter.

A request for a transportation order should be included if a defendant or necessary witness is in custody. If the court has not previously ordered the defendant to be present at the motion hearing and the defendant is not in custody, counsel for the defendant shall give written notice of the hearing date to the defendant and file proof of service of same at the time the motion is filed. Failure to request a transportation order when one is required or to give such notice to a non-custody defendant may result in the motion being taken off calendar.

E. Motions to suppress that are to be heard at the preliminary hearing must be personally served and filed at least five (5) court days before the preliminary hearing. Any written response by the People to the motion shall be filed with the Court and personally served on the self-represented defendant or the attorney of record at least two (2) court days prior to the hearing.

F. All other motions and accompanying papers shall be filed not less than ten (10) court days prior to the hearing, unless otherwise provided pursuant to an order shortening time or a statute. Proof of service shall be filed no later than five (5) court days prior to the date of the hearing.

G. All opposition papers shall be filed no later than five (5) court days prior to the hearing, with proof of service on all parties. All reply papers shall be filed no later than two (2) court days prior to the hearing, with proof of service on all parties.

H. Any papers filed with the Clerk in connection with the motion or response thereto shall be accompanied by two complete copies in addition to the original.

I. Continuances of hearings on motions shall not be granted except for good cause shown and upon the filing of a written notice of intention to move for such continuance with the Clerk, together with proof of service on all other parties two (2) court days prior to the hearing.

J. Motions and accompanying papers pursuant to Penal Code § 995 shall include the following:

1. A brief statement in summary form of the facts as set forth in the preliminary examination transcript;

2. A statement of the issues, specifically identifying why the information or indictment should be set aside;

3. Where defendant intends to rely upon some testimony in the transcript, the moving papers shall contain references to the testimony, identified by page and line number of the transcript; and,

4. A statement of the authorities upon which defendant relies with explanation as to why they are applicable. Mere citation of sections of the California Penal Code and the U.S. Constitution will not be sufficient.

K. Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred to in the pleadings or papers by tab identification. Each exhibit must be separated by a hard 8 ½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. **(Effective January 1, 2012; Rule 3.5.1 renumbered effective January 1, 2006; adopted as Rule 18.1 effective July 1, 2004)**

3.5.2 Motions to Suppress Evidence

A. In addition to the requirements of Rule 3.5.1, motions to suppress evidence and all responses shall comply with Penal Code § 1538.5 and controlling case law. (See, e.g., *People v. Williams* (1999) 20 Cal.4th 119 and its progeny when a warrantless search is at issue.)

B. Pursuant to Penal Code § 1538.5(b), hearings to challenge searches, based upon a warrant, should first be heard by the issuing magistrate, if available. Defendants seeking to challenge such a warrant shall comply with the procedure in Local Rule 3.5.1A, in the calendaring and filing of said motion with the issuing magistrate as the "Designated Department."

In cases where the motion is brought to coincide with the preliminary hearing the hearing on the motion shall instead be heard by the magistrate assigned to conduct the preliminary hearing. (Pen. Code § 1538.5 subd. (f).)

C. All motions to suppress must comply with the filing, notice, and content requirements of Local Rule 3.5.1.

1. Moving papers shall include the following:

a. If factual assertions are based on cited documentation (such as police reports) and this documentation has not previously been filed with the court, the moving party shall attach a copy of the cited document.

b. Where a motion to suppress was made at the preliminary examination, any references in the supporting papers to such testimony shall be identified as to volume number, if more than one volume, and page and line number in the transcript.

c. Where no motion to suppress was made at the preliminary examination and if the moving party requests testimony be received by the court at the hearing, the first page of the notice of motion, or motions, shall so indicate. The failure to so indicate shall be construed by the court as a request by the moving party to submit the matter on the statement or statements of fact and the argument of counsel.

d. Where a motion to suppress was made at the preliminary examination and if the moving party requests additional testimony be received by the court at such hearing, the first page of the notice of motion, or motions, shall so indicate. The failure to so indicate shall be construed by the court as a result on the part of the moving party that the matter be submitted on the transcript(s) of prior proceedings and the argument of counsel.

2. Responding papers shall include the following:

a. If factual assertions are based on cited documentation and this documentation has not yet been filed with the court, the responding party shall attach a copy of the cited document.

b. If the responding party intends to present testimony at the hearing, the first page of the response shall so indicate. Failure to so indicate may be construed by the court as a waiver of any right to call or recall witnesses.

c. Where no motion to suppress was made at the preliminary hearing and if the responding party requests testimony be received by the court at the hearing, the first page of the notice of motion or motions shall so indicate. The failure to so indicate shall be construed by the court as a request by the responding party to submit the matter on the statement or statements of fact and the argument of counsel.

D. Each party is responsible for insuring that its witnesses are present for the hearing.

E. Motions for Traverse of Search Warrant:

1. In accordance with *Franks v. Delaware* (1978) 438 U.S. 154, 90 S.Ct. 2674, as explained in *People v. Wilson* (1986) 182 Cal.App.3d 742, 227 Cal.Rptr. 528, the moving party must do the following:

a. Make a Penal Code § 1538.5 motion.

b. Establish standing to contest the search.

c. Point to specific portions of the affidavit which contain false information, or demonstrate with specificity what information it is claimed was omitted.

d. Allege that the misstatements or omissions were made by the officer/affiant with the intent to deceive, or were made recklessly (i.e., with utter disregard for the truth). Allegations of negligence, or allegations failing to refer to the state of mind of the affiant, are insufficient.

e. Demonstrate that the alleged misstatements or omissions were material. Materiality in this context means that the affidavit with the objectionable language taken out or omissions added would be lacking sufficient probable cause.

f. Submit affidavits or other competent evidence demonstrating the probable truth of the defense allegations, or satisfactorily explain the absence of such affidavits.

F. If any motion involves a warrant, the moving papers shall include a copy of the warrant and its affidavit.

G. Failure to comply with the above-stated rules may result in appropriate sanctions. In the case of the moving party, this may include a summary denial of the motion. **(Effective July 1, 2008; Rule 3.5.2 renumbered effective January 1, 2006; adopted as Rule 18.2 effective July 1, 2004)**

(Rule 3.5 renumbered effective January 1, 2006; adopted as Rule 18 effective July 1, 1992)

RULE 3.6 TRAFFIC INFRACTION CASES

3.6.1 Trial of Traffic Infractions

At the discretion of the court, the court may conduct a trial of the defendant charged with an infraction which is a violation of the Vehicle Code or of a local ordinance adopted pursuant to the Vehicle Code in the following manner, as per Vehicle Code § 40901:

A. If the defendant waives his or her rights to confront and cross-examine witnesses, to subpoena witnesses on defendant's behalf, and to hire counsel at defendant's own expense, the trial may proceed at the time of arraignment before the judge conducting the arraignment. Prior to entry of a waiver of these constitutional rights, the court shall inform the defendant in writing of the nature of the proceedings and of these rights, and ascertain that the defendant knowingly and voluntarily waives these rights before proceeding.

B. If the non-English speaking population of Fresno County which speaks any one language exceeds 5% of the total population of the county, a written

explanation of the proceedings and the rights of the defendant referred to in subsection (A) will be available in that language.

C. The court may accept testimony or other relevant evidence introduced in the form of a notice to appear issued pursuant to Vehicle Code § 40500 or any business record or receipt. **(Rule 3.6.1 renumbered effective January 1, 2006; adopted as Rule 19.1 effective January 1, 2002)**

3.6.2 Trial by Declaration

Pursuant to Vehicle Code § 40902, a defendant charged with Vehicle Code infractions or violations of local ordinances adopted pursuant to the Vehicle Code may waive his or her right to personally appear for trial, and may request trial by written declaration without a personal appearance. Trial by declaration is available to any defendant who wishes to contest the citation and who timely requests trial by declaration. Trial by declaration shall be requested and conducted in accordance with Rule 4.2.10 of the California Rules of Court. Trial by declaration is not available if defendant has been notified that a personal appearance is mandatory. A defendant electing this procedure shall notify the Clerk of his or her current address and of any changes thereof. **(Effective July 1, 2007; Rule 3.6.2 renumbered effective January 1, 2006; adopted as Rule 19.2 effective January 1, 2002)**

3.6.3 Traffic Infraction Appeals

A party may appeal an unfavorable decision made in the trial court to the Appellate Division of the Superior Court pursuant to Rules 8.800 through 8.821 and 8.60 through 8.880 of the California Rules of Court. The Notice of Appeal (form TR1-55) must be filed with the Clerk of the trial court within thirty (30) CALENDAR DAYS after the rendition of judgment. No extension of time is allowed.

The appeal must be directed toward errors of law only. An appeal is not a retrial, and introduction of new evidence will not be permitted. The forms and instructions on appeal procedures are available in all traffic court locations in Fresno County. **(Effective January 1, 2009; Rule 3.6.3 renumbered effective January 1, 2006; adopted as Rule 19.3 effective January 1, 2002)**

(Rule 3.6 renumbered effective January 1, 2006; adopted as Rule 19 effective July 1, 1992)

(Chapter 3 amended effective January 1, 2006; adopted as III effective July 1, 1992)

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CHAPTER 4. MISCELLANEOUS RULES

RULE 4.1 RULES OF GENERAL APPLICATION

4.1.1 Jury Instructions and Verdict Forms

A. Where there is a trial by jury, the parties shall request instructions by submitting proposed instructions to the trial judge on the first day of trial. The latest edition of CALCRIM or CACI (Judicial Council of California Civil Jury Instructions) forms shall be used wherever applicable.

B. Proposed pattern jury instructions, which have been modified by a party, shall clearly indicate any proposed change.

C. The party requesting a CALCRIM or CACI instruction which contains one or more blanks shall type in the blank space all the words required to adapt the form for use in the pending case.

D. Instructions shall be submitted either on a form with a detachable top or in a multi-page format. If a form with a detachable top is used, the top portion of the instruction shall contain the name of the party upon whose behalf it is requested and citation to supporting authority. If that instruction is used, the detachable bottom of the form will be given to the jury for use during deliberations. If a multi-page format is used, one page shall contain the name of the party upon whose behalf it is requested and citation to supporting authority. A separate page or pages shall contain the instruction itself. If that instruction is used, only the page or pages containing the instruction itself will be given to the jury for use during deliberations.

E. In civil cases each party shall submit proposed verdict forms suitable for used by the jury in the pending case. In criminal cases the court may order the prosecution to submit proposed verdict forms, including lesser offenses, suitable for use by the jury in the pending case. Each verdict must be submitted on a separate form, must contain the caption of the case, and must not indicate the party upon whose behalf the verdict is submitted. **(Effective July 1, 2007; Rule 4.1.1 renumbered effective January 1, 2006; adopted as Rule 20.1 effective July 1, 2004)**

4.1.2 Sound Recordings to be Offered as Evidence at Trial

A. Any party intending to offer a sound recording in evidence at trial shall prepare a transcript of the sound recording at least two (2) weeks before trial and serve such transcript and a copy of the recording on all other parties. Any party disputing the accuracy of the transcript shall prepare his own transcript of the sound recording identifying the disputed portions and serve that transcript on all other parties no later

than three (3) days before trial. When disputed, the parties shall meet and confer in a good faith effort to resolve their differences.

B. In the event that the differing versions cannot be resolved by the parties, they shall alert the Presiding Judge at the trial readiness hearing to reserve an appropriate amount of time in the assigned trial court to settle the dispute before summoning a jury panel.

C. Nothing herein is intended to contravene the applicable rules of discovery or valid claims of confidentiality provided by law. If a party is entitled to maintain the confidentiality of a sound recording and chooses to do so until trial, a proposed settled transcript shall be lodged with the court when the sound recording is marked for identification. The opposing party shall be allowed a reasonable opportunity to listen to the sound recording, prepare a proposed transcript and lodge objections before the sound recording is received as evidence.

D. Each transcript shall be certified by the person preparing it. In the event the sound recording is in a language other than English, the certification shall also include a certification by the person translating the sound recording.

E. The propounding party shall prepare a sufficient number of copies of the transcript for distribution as ordered by the court. **(Rule 4.1.2 renumbered effective January 1, 2006; adopted as Rule 20.2 effective July 1, 2000)**

4.1.3 Confidentiality of Jurors' Declarations

The court may grant access to declarations that were submitted to the court by prospective trial and grand jurors upon application to the trial judge or, if the trial judge is unavailable, to the presiding judge or his or her designee. If the applicant seeks personal juror identifying information of trial jurors that has been sealed by the court pursuant to Code of Civil Procedure § 237, a noticed motion in accordance with that section is required. **(Rule 4.1.3 renumbered effective January 1, 2006; adopted as Rule 20.3 effective July 1, 2004)**

4.1.4 Requests to Conduct Media Coverage

A. Requests for media coverage (photographing, recording or broadcasting of court proceedings by the media using television, radio, photographic or recording equipment) shall comply with the provisions of California Rules of Court, Rule 1.150.

B. The court will rule on the request at the hearing. **(Effective July 1, 2007; Rule 4.1.4 renumbered effective January 1, 2006; adopted as Rule 20.4 effective July 1, 2000)**

4.1.5 Dangerous, Large or Bulky Exhibits

A. Permission from the judge assigned to the hearing or trial must be obtained before a party may bring dangerous, large or bulky exhibits into the courthouse. If possible, the party should substitute a photograph, technical report, or dummy object for proposed exhibits which are either:

1. Inherently dangerous, such as:

a. Firearms;

b. Any type of explosive powder;

c. Explosive chemicals, toluene, ethane;

d. Explosive devices, such as grenades or pipe bombs;

e. Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethyl-ether;

f. Canisters containing tear gas, mace;

g. Rags which have been soaked with flammable liquids;

h. Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyrrolidine, morpholine, or piperidine;

i. Samples of any bodily fluids, liquid or dried; or

j. Controlled or toxic substances; or

k. Corrosive or radioactive substances.

2. Large and cumbersome, such as a ladder, sewer pipe, or automobile chassis.

If a party believes the exhibit should be brought into the courtroom without substitution, an application for permission must be made in writing and describe the materials to be brought into the courtroom and the reason a substitution should not be made. The option of viewing the materials at another location may be considered by the court.

B. Evidence received in any case shall be limited to those items required in the case and shall be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence for a longer period of time.

C. No exhibit shall be accepted by the Clerk or exhibits custodian unless:

1. All containers of controlled or toxic substances are securely sealed and protected against breakage to safeguard court personnel, so that the contents cannot be spilled and odors cannot be emitted;

2. All containers of liquid substances, including bodily fluids, are securely sealed and protected against breakage to safeguard court personnel, so personnel are not exposed to the contents and odors;

3. All objects containing bodily fluids or dangerous, controlled or toxic substances (e.g., bloody shirt, gasoline soaked rage, etc.) are placed in containers that are securely sealed and protected against breakage so that odors cannot be emitted and court personnel are safeguarded;

4. All firearms are secured by a nylon tie or trigger guard, and have been examined by the bailiff to determine that they have been rendered inoperable;

5. All sharp objects, such as hypodermic needles, knives, and glass, are placed in containers that are securely sealed and protected against breakage, which will safeguard personnel;

6. All containers with liquid substances are clearly marked and identified as to type and amount;

7. All containers of controlled substances are clearly marked, identified, weighed, and sealed;

8. All cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination.

D. All exhibits must be individually tagged with the proper exhibit tag, properly completed, and securely attached to the exhibit. Any exhibit improperly tagged, marked, weighed, or identified will not be accepted by the court. Unless otherwise ordered, unidentified or improperly identified liquids, containers, controlled substances, or other suspect substances shall be returned to the party offering them.

E. When a dangerous, large or bulky exhibit that has been marked and identified or received in evidence poses a security, storage or safety problem, on recommendation of the Clerk of the court, the court may order that all or a portion of it be returned to the party that offered it. In the case of exhibits offered by the prosecutor in a criminal case, the court may order that the exhibit be returned to the law enforcement agency involved. The order shall require that a full and complete photographic record of the exhibit or the portion returned be substituted for the exhibit. The party who offered the exhibit shall provide the photographic record. The party or agency to whom the exhibit is returned shall be responsible for maintaining and preserving the exhibit until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit shall remain in place and shall not be disturbed. Each exhibit shall be maintained intact and

in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of the exhibit, the party or agency to whom it was returned shall promptly deliver the exhibit to the appropriate court, with notice to all parties. **(Rule 4.1.5 renumbered effective January 1, 2006; adopted as Rule 20.5 effective January 1, 2004)**

4.1.6 Facsimile Machine (FAX) Filing and Notification

A. The Superior Court of California, County of Fresno hereby adopts rule 2.300 et seq. of the California Rules of Court, allowing for facsimile filing of civil, probate and family law documents. The Superior Court of California, County of Fresno also allows for facsimile filing of specified documents in juvenile cases as set out in California Rules of Court 5.522. The Superior Court of California, County of Fresno does not allow for facsimile filing of criminal documents including complaints and complaints attached to "Rush Arrest Warrants".

B. Fax filings will be accepted during normal business hours. A document may be faxed to the court at any time of the day. Acceptance of the document for filing with the court shall be deemed to occur:

1. On the date the document was faxed to the court if the submission occurred during normal business hours of the Clerk's Office; and,

2. On the next business day the Clerk's Office is open for business if the submission occurred after normal business hours of the Clerk's Office.

For purposes of this section, normal business hours shall be 8:00 a.m. through 4:00 p.m., Monday through Friday, excluding court holidays. Nothing in this section shall limit the clerk's ability to reject filings.

C. A party who has established a filing fee account in advance may file pleadings and documents by facsimile machine directly with the Clerk. All such filings must fully comply with the provisions of the California Rules of Court. Any party electing to file by facsimile shall be deemed to have consented to service of notices by the court by facsimile machine.

D. In addition to other fees imposed by law, a party filing by fax directly with the court shall pay a fee of $1.00 for each page of the paper.

E. Any document received with missing or partial pages, or other facial defects, shall not be filed but shall be returned by the Clerk to the sending party by mail.

F. Where these rules require notification by letter, to court or counsel, such notification may be by fax. The court has several fax numbers, and notification to a specific judge shall be addressed to him or her by name and shall be transmitted to the fax number nearest his or her chambers.

G. A list of fax numbers may be obtained from the Clerk by a fax request to (559) 457-1624, citing this rule. **(Effective July 1, 2011; Rule 4.1.6 renumbered effective January 1, 2006; adopted as Rule 20.6 effective July 1, 2000)**

4.1.7 Trial Readiness Hearing

Repealed. **(Effective July 1, 2007; Rule 4.1.7 renumbered effective January 1, 2006; adopted as Rule 20.7 effective July 1, 2000)**

4.1.8 Identification of Document Preparers

A. In this section:

1. "Document preparer" means a person, other than an attorney or an employee of an attorney, who prepares for compensation a paper for filing; and

2. "Paper for filing" means any paper, as defined in Rule 1.1.4, prepared for filing on behalf of a party.

B. A document preparer who prepares a paper for filing shall print on a separate sheet of paper the preparer's name, address, telephone number, FAX number and e-mail number, if any. This separate paper identifying the preparer shall be served on the opposing party, filed with the court, and identified in the proof of service.

C. An attorney, or an employee of an attorney, who prepares a paper for filing as "in pro per" shall print on a separate piece of paper the preparer's name, address, telephone number, FAX number and e-mail address, if any. This separate paper identifying the preparer shall be served on the opposing party, filed with the court, and identified on the proof of service.

D. As an additional requirement, document preparers shall type their initials or the initials of their business and the runner numbers in the caption under the heading "Attorney or Party Without Attorney" on the face sheet of the moving papers.

E. A document preparer shall, not later than the time at which a paper for filing is presented for the party's signature, furnish to the party a copy of the paper.

F. A document preparer shall not execute any paper on behalf of a party.

G. Nothing in this rule shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

H. These requirements are in addition to those regarding legal document assistants set forth in the Business and Professions Code. **(Rule 4.1.8 renumbered effective January 1, 2006; adopted as Rule 20.8 effective July 1, 2000)**

4.1.9 Electronic Mail Communication with the Court

Consistent with the Canons of Ethics relating to Ex-Parte Communications with the court, an attorney for a party, or a party appearing in pro per, may direct electronic mail communications to the clerk of the department to which a case has been assigned, relating to a case pending before that court.

However, unless otherwise approved by the court, consistent with the Canons of Judicial Ethics and the California Rules of Professional Conduct, no attorney or party to an action shall, either with or without prior notice to opposing counsel, contact any judge directly by e-mail concerning a case pending before the court, or a matter relating to a case pending before the court. **(Rule 4.1.9 renumbered effective January 1, 2006; adopted as Rule 20.9 effective January 1, 2005)**

4.1.10 Protocol for Communication Between Courts Regarding Domestic Violence Orders

A. Purpose

This rule sets forth the court communication protocol for Domestic Violence and Child Custody Orders as required by the California Rules of Court. This protocol is intended to avoid the issuance of conflicting orders when possible, and to permit appropriate visitation between a restrained person and the child(ren) who is/are the subject of a family, probate or juvenile proceeding, while providing for the safety of all victims and witnesses. Furthermore, the best interests of the child(ren), litigants and the Court are promoted by early identification and coordination of proceedings involving the same child(ren) or the child(ren)'s caretaker(s). To that end, this rule is also designed to ensure that all bench officers have information about the existence of overlapping cases. This rule recognizes the statutory requirement that criminal protective orders have precedence of enforcement over all other contract orders; however, it acknowledges that there are situations where it is appropriate to permit visitation between a criminal defendant and his or her child.

B. Notice of Pending Cases and Orders

1. Court Inquiry

Before issuing a criminal or non-criminal protective order, or a custody or visitation order, the Court should inquire of the parties or the attorneys whether there are any cases in which there are criminal or civil protective orders, or custody and visitation orders that involve the child(ren) in the current case.

2. Attorneys and Self-Represented Parties in Family, Probate and Juvenile Cases

All attorneys and self-represented parties involved in family law, probate and juvenile cases shall inform the Court about any cases in which there are

criminal or non-criminal protective orders or custody and visitation orders that involve the child(ren) in the current case. The information shall be provided to the Court, all parties and all attorneys in the case.

3. Prosecuting Attorneys

Pursuant to Penal Code § 273.75, the District Attorney or City Attorney shall investigate whether there are any criminal or civil protective orders or custody and visitation orders that involve a child of, or under the care of, a participant in a domestic violence charge. Prosecuting attorneys shall inform the Court, all parties and all attorneys in the case of such orders.

C. **Communication Between Courts**

1. Communication Regarding Existing Cases in Other Departments

When any court becomes aware of the existence of another case involving the same child(ren), the judicial assistant shall notify the Domestic Violence Case Coordinator who shall then provide notification to the other court. The Domestic Violence Case Coordinator shall ensure that the appropriate trial courts receive written notice of overlapping cases. Prior to conducting a hearing in the matter, the trial judge will review the overlapping orders, if appropriate. Notice will be provided to the parties of the overlapping orders reviewed by the judicial officer.

2. Communication Regarding Protective Orders

a. Criminal Protective Orders

When the criminal court issues a protective order against a defendant who has a pending family, probate or juvenile case, the criminal court shall send a copy of the protective order to the appropriate court administrator who will send it to the trial court with the overlapping case. This may be accomplished by working through the Domestic Violence Case Coordinator.

b. Temporary or Permanent Non-Criminal Restraining Orders

When either the Family Court or Dependency Court issues a temporary or permanent restraining order and the restrained person or the protected person has another pending dependency, family, probate, juvenile or criminal case, the Family Court or Dependency Court shall send a copy of the protective order to the appropriate court administrator who will send it to the trial court with the overlapping case. This may be accomplished by working through the Domestic Violence Case Coordinator.

D. **Modification of Criminal Protective Orders**

Criminal protective orders take precedence over other contact orders. When a criminal protective order exists and either or both parties request a child custody order that is inconsistent with the criminal protective order, it is the obligation of the moving parties to seek a modification of the criminal protective order by placing the matter on the criminal domestic violence calendar. Notice must be provided to all parties, attorneys and probation or parole officers. No party shall seek a child custody or visitation order in family, probate or juvenile court that is inconsistent with an existing criminal protective order unless a judicial officers presiding over the criminal domestic violence matter has first granted the request to modify the criminal protective order. **(Effective January 1, 2010, New)**

(Rule 4.1 renumbered effective January 1, 2006; adopted as Rule 20 effective July 1, 1992)

RULE 4.2 APPEALS TO THE APPELLATE DIVISION

4.2.1 Three Judge Panel

All infraction, misdemeanor, and limited civil case appeals are decided by a majority of a three (3) judge panel of the Appellate Division. **(Rule 4.2.1 renumbered effective January 1, 2006; adopted as Rule 21.1 effective July 1, 200)**

4.2.2 Filing of Appeal, Briefing and Hearing Dates

Appeal papers shall be filed with the Clerk. Briefing and hearing dates will be set by the court. Each party shall ensure that complete documentation is submitted in a timely manner. **(Rule 4.2.2 renumbered effective January 1, 2006; adopted as Rule 21.2 effective July 1, 2000)**

4.2.3 Record on Appeal

A. Pursuant to California Rules of Court, rules 8.830(a)(1)(B), 8.833, 8.860(a)(1)(B), 8.863, 8.910(a)(1)(B) and 8.914 the court elects to use the original trial court file instead of the clerk's transcript as the record of the written documents from the trial court proceedings.

B. Pursuant to California Rules of Court, rules 8.835(c), 8.868(c) and 8.917(c) on stipulation of the parties or on order of the trial court under rule 8.837(d)(6)(A), 8.869(d)(6)(A) or 8.916(d)(6)(A) the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. **(Effective January 1, 2011)**

4.2.4 Briefing Procedure

A. An original and three (3) copies of each brief shall be filed with the Clerk. The original, which will be maintained in the court file, shall have a standard two-hole punch on the top when submitted for filing. Each of the three (3) copies shall have a

standard three-hole punch on the left side when submitted for filing. Notwithstanding the California Rules of Court, briefs shall not be bound.

B. All briefs shall include appropriate points and authorities, clear identification of the issue(s) being raised and valid proof of service. Because appeals are concerned with issues of law, mere factual arguments will generally be insufficient. If applicable, a reporter's transcript and/or a settled statement on appeal shall be submitted.

C. A party may file a request for an extension of time to comply with the briefing schedule with the Presiding Judge of the Appellate Division. Such request shall include a separate declaration providing good cause for the extension of time, a proposed order and a properly completed checklist for proposed orders form. The checklist for proposed orders form is available from the Clerk's Office.

D. Failure of the appellant to file a timely opening brief or to otherwise comply with applicable rules may result in dismissal of the appeal. **(Effective January 1, 2009; Rule 4.2.3 renumbered effective January 1, 2006; adopted as Rule 21.3 effective January 1, 1997)**

(Rule 4.2 renumbered effective January 1, 2006; adopted as Rule 21 effective July 1, 1992)

(Chapter 4 amended effective January 1, 2006; adopted as IV effective July 1, 1992)

CHAPTER 5. FAMILY LAW RULES

RULE 5.1 GENERAL PROVISIONS

5.1.1 Result of Failure to Comply

Failure to comply with these Family Law Rules may result in one or more of the following on the request of the other party or on the court's own motion:

A. Making an order based solely on the pleadings properly before the court.

B. Making or vacating orders as the court deems appropriate under the circumstances.

C. Continuing the matter.

D. Awarding attorney's fees and costs against the non-complying party, without the requirement of filing either an Income and Expense Declaration or a noticed motion.

E. Removing the matter from calendar.

F. These rules shall not prevent the exercise of judicial discretion whenever appropriate. **(Rule 5.1.1 renumbered effective January 1, 2006; adopted as Rule 30.1 effective July 1, 2001)**

5.1.2 Abbreviations

Abbreviations used in these Family Law Rules are defined in Appendix C-1. **(Effective January 1, 2006, New)**

(Rule 5.1 renumbered effective January 1, 2006; adopted as Rule 30 effective July 1, 1992)

RULE 5.2 MOVING AND RESPONSIVE PLEADINGS AND OTHER NON-TRIAL HEARINGS

5.2.1 Setting the Date and Time

A. **Clear the Date**. No case shall be calendared for court hearing without the moving party first contacting the opposing attorney (if known) and attempting to obtain a mutually agreeable hearing date, unless notice is otherwise excused by these rules.

B. **Set the Date**. Attorneys may obtain a hearing date on the family law calendar by calling the calendar clerk and obtaining a date and time for the hearing. A self-represented party may obtain a hearing date from the Clerk at the time the party's papers are filed.

If effective service of the moving papers is not made, the party shall notify the Calendar Clerk and Family Court Services, if applicable, to remove the matter from calendar.

C. **Attorney's Fees**. Attorney's fees may be raised in the responsive papers to a NOM/OSC even though no other financial issues were raised in the moving papers. The responsive papers must be accompanied by a current Income and Expense Declaration. **(Effective July 1, 2007; Rule 5.2.1 renumbered effective January 1, 2006; adopted as Rule 31.2 effective July 1, 2001)**

5.2.2 Temporary Orders and Ex Parte Procedures

A. **Applications**. Applications for ex parte orders, including a TRO shall be made in accordance with all applicable California Codes and Rules of Court. **NO ex parte order shall be granted without notice to the opposing party unless the application clearly states facts showing the great or irreparable injury would result to the applicant and/or children if the matter were heard with notice.**

B. **Declarations**.

1. Change in Status Quo. NOTICE! There is an absolute duty to disclose the fact that a requested ex parte order will result in a change of status quo. The statement "THIS IS A REQUEST FOR CHANGE IN STATUS QUO" shall appear in bold capital letters at the beginning of the declaration.

The declaration in support of a request for an ex parte order which changes the status quo shall state all applicable facts describing the existing situation and supporting the requested change. In determining status quo, the court will consider actual custody/visitation practices which have occurred on a regular basis.

2. Exigent Circumstances. The first paragraph of the declaration shall set forth the exigent circumstances requiring the ex parte hearing.

3. Hearsay. Ex parte orders will be issued only if accompanied by attached declaration(s) stating specific facts within the personal knowledge of the declarant which are adequate to support the issuance of such orders.

4. Child Custody Visitation.

a. The declaration in support of a request for an ex parte order relating to custody/visitation of a minor child shall include the following:

1) A completed UCCJEA declaration;

2) A summary of the custody/visitation practices of the parties during the last twelve (12) months, the date the parents

separated, and whether or not the applicant obtained custody by mutual agreement;

3) The current custody order **SHALL BE ATTACHED**;

4) Specific facts describing what immediate bodily injury or emotional harm the children may be subjected to if the current custody and/or visitation order remains in effect; and

5) No ex parte change in status quo will be granted unless clear and specific facts are stated which demonstrate that the health and welfare of the child will be in immediate danger without the change.

b. The application shall set forth a proposed specific visitation plan pending the hearing. The following should be included: the date, time, place and manner of exchange of the minor child(ren) if any visitation orders are requested.

5. Removal From Residence. An ex parte order removing a party from a residence will not issue without recent ("recent" means within thirty (30) days absent extraordinarily good cause) facts demonstrating specific violence or threat of violence, and the date or dates thereof, and the specific physical or emotional harm that may result. The declaration shall also set forth:

a. The name and relationship of all occupants of the residence;

b. Ownership of the residence;

c. If a rental, the name(s) of the lessee(s) and their relationships to each other and/or the children; and

d. Other relevant information.

6. Exclusive Use of Vehicle. An ex parte order granting exclusive use of a vehicle will not be made unless the declarant sets forth facts showing need, past use, and alternative transportation for the other party.

7. Payment of Obligations. An ex parte order requiring the payment of obligations is disfavored. Any request shall include financial and other facts justifying the request and an Income and Expense Declaration which includes an estimate of opposing party's gross income and any evidence thereof.

C. **Ex Parte Request**.

1. Before submitting an ex parte hearing request, the party seeking ex parte relief shall contact the opposing party and attempt to resolve the conflict. If the conflict cannot be resolved, then the party seeking ex parte relief shall submit a signed declaration clearly setting forth the facts of the attempt.

2. The following documents shall be submitted to the court:

a. Declaration in support of request;

b. Declaration setting forth effort to resolve the conflict;

c. Copy of the current custody order;

d. The Order to Show Cause and TRO forms; and

e. Fully completed UCCJEA form (in child custody cases).

All documents, together with any copies to be conformed, shall be submitted directly to the Family Law Calendar Department, 2nd Floor, B.F. Sisk Courthouse with a cover sheet clearly marked **"EX PARTE HEARING REQUEST, ATTENTION: FAMILY LAW EXAMINER"**.

3. If the ex parte request is granted, the moving party will be notified of the date, time, and department for the hearing. **(Effective July 1, 2011; Rule 5.2.2 renumbered effective January 1, 2006; adopted as Rule 31.3 effective July 1, 2000)**

5.2.3 Orders Shortening and Extending Time

A. Absent a stipulation and approval by the court, a request for an order shortening time shall follow the procedure set forth in Rule 5.2.2. The opposing attorney must be contacted in an attempt to clear the hearing date.

B. The court will favor an order shortening time for additional issues to be heard on the same date previously set for an OSC/NOM. The request shall include a declaration that the opposing counsel or party has been notified of the intent to seek an order shortening time and has been informed of the additional issues. The declaration shall include a statement as to whether the opposing party agrees to or opposes the order shortening time, and if applicable, the specific reasons for opposition. **(Rule 5.2.3 renumbered effective January 1, 2006; adopted as Rule 31.4 effective July 1, 1999)**

5.2.4 One Setting Per Calendar Call

Except for the DCSS, attorneys shall set only one case per calendar call. If an attorney has more than one appearance on a calendar call, that attorney shall make every reasonable effort to reschedule all but one hearing. **(Rule 5.2.4 renumbered effective January 1, 2006; adopted as Rule 31.5 effective July 1, 1998)**

5.2.5 Moving and Responsive Pleadings

A. **Filing and Serving**. The original and two copies of all moving and responsive law and motion pleadings must be filed. A true and complete copy shall be served on the opposing party. All parties shall bring an extra file-conformed copy of their pleadings to the hearing.

B. **Copy to DCSS**. If public assistance is being paid, the DCSS is an indispensable party to the action and shall be served with the pleadings.

C. **Late Filing of Responsive Pleading**. A responsive pleading may be filed or served late for good cause or if the opposing party expressly consents to the late service. A copy of the pleading shall be delivered to the Judicial Officer's Clerk no later than 2:00 p.m. on the date before the hearing. **(Rule 5.2.5 renumbered effective January 1, 2006; adopted as Rule 31.6 effective July 1, 2001)**

5.2.6 Pre-Hearing Settlement Efforts

Parties shall confer before the scheduled hearing date to resolve or limit the issues. Failure to confer and attempt to settle in good faith shall have a bearing on attorney's fees to be awarded. This rule does not apply in cases where there are allegations involving domestic violence and neither party is represented by an attorney. **(Rule 5.2.6 renumbered effective January 1, 2006; adopted as Rule 31.7 effective July 1, 1998)**

5.2.7 Matters Off Calendar

A. **Request**. If there is a request to take a hearing off calendar, the moving party shall contact the Judicial Assistant of the Department prior to the hearing. If the request is granted, the requesting party shall submit a letter of confirmation with a copy to the opposing party which verifies the cancellation of the hearing. Unless the court is so notified, both parties must appear on the hearing date and advise the court of the disposition of the matter and why sanctions should not be imposed for failure to abide by this rule.

B. **Consent of Parties**. A hearing relating to child custody or visitation shall not be taken off calendar after mediation or evaluation without the written consent of all parties.

C. **Settlement Conference or Objection Hearing to Family Court Services Recommendation**.

1. Before withdrawing an objection, the objecting party shall notify the Clerk in the department where the matter is set to be heard, the responding party and **Family Court Services** in writing that the objection is withdrawn.

2. If the FCS objection hearing is taken off calendar or the objecting party does not appear at the hearing, the matter may be submitted on the

proposed order and the court may, in its discretion, adopt the proposed order and make it an order.

3. If the objection is withdrawn because of a stipulation which resolves the issues, the stipulation and order shall be submitted for signature to the Judicial Officer before the date of the objection hearing.

4. A settlement conference may be continued once by the parties without the approval of the Judicial Officer, but still requires the continuation fee. **(Effective July 1, 2007; Rule 5.2.7 renumbered effective January 1, 2006; adopted as Rule 31.8 effective July 1, 2001)**

5.2.8 Continuances

A. **Request**. If there is a request to continue a hearing by agreement, the moving party shall, as early as possible, contact the Judicial Assistant of the Department. Upon the showing of good cause and the department's approval, the parties may call the Calendar Clerk to obtain the next available hearing date. A letter or stipulation confirming the new date shall be submitted to the Calendar Clerk along with the appropriate fee. Unless the request is approved by the department, both parties must appear on the hearing date and advise the court of the disposition of the matter and why sanctions should not be imposed for failure to abide by this rule. Requests for continuances are strongly disfavored.

1. Court Permitted Continuances. Permission of the Judicial Officer shall be obtained before a stipulated continuance is granted. The court must also approve the new hearing date if it is prior to the Clerk's next available hearing date.

2. Notify FCS or DCSS. When appropriate, FCS and DCSS must also be notified of continuances by the party requesting the continuance.

B. **Temporary Restraining Order**. Temporary restraining orders shall terminate on the date of the hearing, unless an order extends the effective date. The party shall deliver to the sheriff's office a conformed copy of the order or reissuance, which shall remain in effect to the new hearing date.

C. **Contempts**. Continuances of contempt hearings must be requested in open court or obtained by written stipulation signed by the citee. **(Effective July 1, 2007; Rule 5.2.8 renumbered effective January 1, 2006; adopted as Rule 31.9 effective July 1, 1998)**

5.2.9 Presence of Parties and Attorneys

A. **Preset at Calendar Call**. The parties or their attorneys shall be present in court when the case is called, unless they have previously checked in with the bailiff.

B. **Calendars**. Attorneys shall bring their calendars to court. **(Rule 5.2.9 renumbered effective January 1, 2006; adopted as Rule 3.110 effective January 1, 2000)**

5.2.10 Conduct of Hearings

A. **Relief Based On Pleadings**. The court may grant or deny relief solely on the basis of pleadings without the presentation of oral testimony except for good cause shown. The court may consider only those pleadings and declarations filed with the court when granting or denying orders. Permission to take oral testimony is within the discretion of the court. Reasonable cross-examination of a party declarant may be permitted without advance written notice.

All relevant and admissible facts to be asserted by a party or a witness shall be set forth in full on attached declarations, served with the pleadings, and signed under penalty of perjury by the declarant.

A party seeking to present oral testimony at the hearing (other than a contempt) shall give written notice to all parties and the court at least five (5) court days before the scheduled hearing.

B. **Thirty Minute Limitation**. The law and motion calendars are limited to matters that take no more than fifteen (15) minutes per side of total court time, **including in-chambers conferences**.

C. **A settlement conference may be calendared by the Judicial Officer before setting the matter for a long cause hearing date.** Temporary orders, based on the pleadings, may be made by the Judicial Officer before the case is set on the settlement conference calendar. **(Effective July 1, 2007; Rule 5.2.10 renumbered effective January 1, 2006; adopted as Rule 31.11 effective July 1, 1998)**

5.2.11 OSC Contempt

A. **Attorney for Citee**. If the cite is unable to afford counsel, a court appointed attorney will be provided to the citee.

B. **Order After Hearing**. The order after hearing must set forth the findings of the court.

1. Validity of the order;

2. Knowledge of the order by the citee;

3. Ability of the cite to have complied with the order for the specified violation(s);

4. Willful violation of the order by the cite for the specified violation9s); and

5. The orders of the court with regard to the finding of contempt and the sentencing. No contempt order will be signed by the court without

compliance with the foregoing. **(Rule 5.2.11 renumbered effective January 1, 2006; adopted as Rule 31.12 effective July 1, 1998)**

5.2.12 County Prisoners

If a prisoner in a Fresno County Detention Facility is a party, the attorney for either the prisoner or opposing party shall notify the bailiff of the Family Law Department/Family Support Department of this fact by 12 noon on the day before the hearing. The notification should be in writing, if possible, giving the full name and birth date of prisoner and the title and case number of the matter, so that the prisoner may be present at the hearing. **(Rule 5.2.12 renumbered effective January 1, 2006; adopted as Rule 31.13 effective January 1, 1999)**

5.2.13 Attorneys' Fees and Costs

A. **Income and Expense Declaration**. Except in matters involving sanctions or enforcement, attorney's fees and costs will not be awarded unless an Income and Expense Declaration is filed within the preceding ninety (90) days.

B. **Acceleration Provision**. If attorney's fees and costs are awarded on a monthly installment basis, the following acceleration provision shall apply – "If any payment is ten (10) days delinquent, the entire balance remaining will immediately become due and payable."

C. **Award From Assets**. If liquid community assets exist, an award of attorney's fees and costs may be made to one or both attorney(s) from this source.

D. **Fees in Excess of $2,500.00**. If attorney's fees and costs of litigation (including fees for experts) are requested in a combined amount in excess of $2,500.00, the request shall be supported by a separate declaration signed by the attorney, describing services performed, time expended, hourly rate, and all reasonably anticipated fees and costs. In the absence of such declaration, no award in excess of $2,500.00 for fees and costs will be made. **(Rule 5.2.13 renumbered effective January 1, 2006; adopted as Rule 31.14 effective January 1, 1999)**

5.2.14 Photocopies in Court File

If photocopies of forms adopted by the Judicial Council are illegible or the reverse side is photocopied upside down, they may not be accepted as original documents for filing. **(Rule 5.2.14 renumbered effective January 1, 2006; adopted as Rule 31.15 effective January 1, 1999)**

5.2.15 Judicial Officer's Signature

A. All proposed orders requesting the Judicial Officer's signature shall be delivered to the Clerk's Office.

B. All requests for a hearing requiring a Judicial Officer's signature to be calendared shall be delivered to the Clerk's Office. **(Rule 5.2.15 renumbered effective January 1, 2006; adopted as Rule 31.16 effective January 1, 1999)**

5.2.16 Preparation of Order After Hearing

A. Unless the court orders otherwise or prepares the Order After Hearing on its own, the moving party shall prepare a written order following any hearing.

B. The preparing party shall mail the proposed order to the responding party for approval within ten (10) calendar days following the hearing. The responding party, within ten (10) calendar days after mailing, shall approve or refuse to approve the order and state alternate language.

C. If the preparing party does not receive a response within ten (10) days from the date of mailing of the proposed order, the preparing party shall mail a second letter to the respondent party.

The second letter shall notify the responding party that in five (5) days the proposed order will be submitted to the hearing officer, together with a copy of the second letter, for signature and filing with the court, without further notice to the responding party.

D. If there is a disagreement, each party shall submit to the court a proposed order with a cover letter delineating the areas of discrepancy. The court will make a ruling after a review of the appropriate record.

E. After an order has been signed by the Judicial Officer and filed, the party preparing the order shall serve a conformed filed copy on the opposing party. In addition, if applicable, a copy shall be served on DCSS and/or FCS within fifteen (15) days after filing and shall be reflected on the proof of service.

F. If the party directed by the court does not prepare an Order After Hearing within ten (10) days of the hearing and does not communicate the reason for the delay to the opposing party, then the opposing party may prepare the order and process it pursuant to B and C above.

G. Where the court does not prepare its own Order After Hearing, the parties may be directed to complete pre-printed Order After Hearing forms prior to leaving the courthouse. The pre-printed Order After Hearing forms shall be signed by both parties and, if represented, their attorneys of record. **(Rule 5.2.16 renumbered effective January 1, 2006; adopted as Rule 31.17 effective July 1, 1999)**

5.2.17 Signatures on Stipulations

A. Stipulations shall be signed by each of the parties and their respective attorneys.

B. Exceptions.

1. Only the attorneys need to sign a stipulation to continue a hearing except an OSC re: contempt (see Rule 5.2.8(C)).

2. Only the attorneys need to sign a stipulation, which was rendered in open court in the presence of the parties.

3. For good cause shown, the court may accept a stipulation signed only by the attorneys. **(Effective July 1, 2007; Rule 5.2.17 renumbered effective January 1, 2006; adopted as Rule 31.18 effective January 1, 1999)**

(Rule 5.2 renumbered effective January 1, 2006; adopted as Rule 31 effective July 1, 1992)

RULE 5.3 JUDGMENTS

5.3.1 Requirements for Every Judgment

A. **EVERY JUDGMENT SUBMITTED TO THE COURT MUST HAVE THE CASE NAME, CASE NUMBER, AND PAGE NUMBER CLEARLY SET FORTH.** All judgments involving children are cleared by FSD to verify the payment (or lack thereof) of public assistance on behalf of the minor children.

B. All judgments involving children are cleared by the Department of Child Support Services (DCSS) to determine involvement.

C. If the DCSS has been or will be involved with the enforcement of a support order, see **Rule 5.4 – CHILD SUPPORT**.

D. Each judgment by declaration submitted to the court must contain the following:

1. Declaration for Default or Uncontested Dissolution, unless the Judgment is entered in Court.

2. Judgment:

a. The “by declaration” box should be checked unless otherwise indicated by a different rule.

b. Unless a specific date in the future is requested, the date for termination of status shall be left blank.

c. Any attachment incorporated into the Judgment shall be in proper court pleading form.

3. Notice of Entry of Judgment with two (2) **large** stamped addressed envelopes. The addresses in the boxes on the Notice of Entry of Judgment must

be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage. Any envelope addressed to a defaulted party must use the address of the Clerk as the return address.

E. When a judgment is requested *nunc pro tunc,* the requesting party shall submit a declaration setting forth the requested date, the facts and reasons which justify the entry of a *nunc pro tunc* order. **(Effective July 1, 2007, Rule 5.3.1 renumbered effective January 1, 2006; adopted as Rule 32.1 effective January 1, 2000)**

5.3.2 Default and No Agreement

The following forms and declarations must be submitted where applicable:

A. A supplemental declaration must be attached to the Declaration for Default or Uncontested Dissolution / Legal Separation. The supplemental declaration will address each applicable issue in the order listed below.

1. Child custody and visitation.

a. Current child custody and visitation pattern.

b. Proposed custody and visitation order with the reasons enumerated, including the percentage of time to be spent with the non-custodial parent.

2. Child Support.

Gross earnings (or, if unknown, an estimate of gross income and facts setting forth ability to earn) of both parties, and their tax filing status and number of exemptions.

3. Spousal support shall be waived or reserved.

4. Division of assets and liabilities.

a. If real property is included in the judgment, the common identification as well as the legal description must be included. This may be by a referenced attached exhibit.

b. All automobiles, motor homes, trailers, motorcycles, and other vehicle must be identified by the license plate number.

c. All boats must be identified by their “CF” number and VIN#.

d. All aircraft must be identified by their “N” number and VIN#.

5. A request for attorney fees and costs shall include an itemized declaration of work performed and costs incurred. A current Income and Expense Declaration must be submitted.

B. A completed current Declaration under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) if there are minor child(ren).

C. A completed Declaration Regarding Service of Declaration of Preliminary Disclosure.

D. When children are involved, a current Income and Expense Declaration or Simplified Financial Statement not older than ninety (90) days must be on file with the court.

E. Property Declaration

If the proposed division is not equal according to the net values in dollar amounts (which must be set forth), the proposed method equalization must be clearly set forth and explained.

F. An Income and Expense Declaration or Simplified Financial Statement that conforms to Rule 5.4.2 must be submitted if there is child support, spousal support, family support or attorney's fees.

G. If there are minor children and DCSS is not or will not be involved in the collection of support, the following language must be used for the child support order. The court will calculate the amount of support for each child and enter the amount into the order:

Petitioner/Respondent shall pay child support for (name of child) in the sum of $_____ per month, and for (name of child) in the sum of $_____ per month, for a total of $_____ per month commencing on (_____), and continuing on the 1st day of each and every month thereafter until the child marries, dies, becomes self-supporting, becomes an active member of the armed services, reaches the age of 19, or reaches the age of 18 and is no longer a full-time high school student, or until further order of the court, whichever occurs first.

H. If DCSS has been, is, or will be involved with the enforcement of a support order, see Rule 5.4.

I. A certified copy of the most recent orders of child support, custody and visitation shall be submitted.

J. If the respondent is incarcerated, this fact shall be set forth in the attached declaration along with expected release date, if known. **(Effective July 1, 2007; Rule 5.3.2 renumbered effective January 1, 2006; adopted as Rule 32.2 effective January 1, 2000)**

5.3.3 Default with Marital Settlement Agreement (MSA)

A. In addition to requirements of Rule 5.3.1 the following shall be submitted:

1. A Marital Settlement Agreement shall address the following issues as applicable.

a. Legal and physical child custody and visitation (including the name(s) and date(s) of birth of the child(ren)).

b. Child support, child care, health insurance, and uncovered unreimbursed health care costs of the minor child(ren).

c. Statutory child support waiver language shall be included in the MSA or may be attached as an exhibit and incorporated in the MSA.

2. Spousal support

3. Real property, assets and debts.

4. Attorney fees.

B. The signature of the defaulted party on any Marital Settlement Agreement must be notarized.

C. For each unrepresented party, the language in the Judicial Council Form entitled “Declaration Re Unrepresented Party” may either be set forth in the MSA (under an appropriate heading) or the form may be attached as an exhibit and incorporated in the MSA.

D. When a party is represented by counsel, the signature of the attorney who did not prepare the Judgment/MSA shall appear to show approval as to form and content.

E. Each party must submit a completed Declaration Regarding Service of Declaration of Preliminary Disclosure.

F. Each party must submit a completed Declaration Regarding Service of Declaration of Final Disclosure on in the alternative a separate Family Code § 2105 Waiver. **(Effective July 1, 2007; Rule 5.3.3 renumbered effective January 1, 2006; adopted as Rule 32.3 effective January 1, 2000)**

5.3.4 Appearance by Respondent and Marital Settlement Agreement or Stipulated Judgment

The following forms must be submitted where applicable:

A. A general appearance by either party may be made by the following:

1. Response.

2. Appearance, Stipulation and Waivers form.

a. A general appearance may be made by checking the applicable box(es). A first paper-filing fee may be required.

B. If response filed:

1. In the absence of an Appearance Stipulation and Waiver, the following language must appear in the Marital Settlement Agreement:

a. The parties stipulate that this cause may be tried as an uncontested matter.

b. The parties waive their rights to notice of trial, findings of fact and conclusions of law, motion for new trial, and the right to appeal.

C. When a party is represented by counsel, the signature of the attorney who did not prepare the Judgment/MSA is required.

D. Each party must submit a completed Declaration Regarding Service of Declaration of Preliminary Disclosure.

E. Each party must submit a completed Declaration Regarding Service of Declaration of Final Disclosure or in the alternative a separate Family Code § 2105 Waiver. **(Effective July 1, 2007; Rule 5.3.4 renumbered effective January 1, 2006; adopted as Rule 32.4 effective January 1, 2000)**

5.3.5 Appearance by Respondent and the Uncontested Judgment is Entered In Court

The following must be submitted:

A. Judgment.

1. The first box entitled “default or uncontested” shall be checked and the rest of paragraph 2 shall be completed.

2. If applicable, a Family Code § 4065 Waiver form shall be included in the Judgment.

3. If the party who did not prepare the Judgment is represented by an attorney, a signature line for counsel is required above the hearing officer’s signature. The party preparing the Judgment does not sign.

4. The applicable waivers must be included in the body of the Judgment or attached as exhibits.

5. The Judgment shall be submitted as recited in open court.

6. Each party must submit a completed Declaration Regarding Service of Declaration of Preliminary Disclosure.

7. Each party must submit a completed Declaration Regarding Services of Declaration of Final Disclosure or in the alternative a separate Family Code § 2105 Waiver. **(Effective July 1, 2007; Rule 5.3.5 renumbered effective January 1, 2006; adopted as Rule 32.4 effective January 1, 1998)**

5.3.6 Judgment after Trial

A. A Judgment incorporating all of the court's rulings shall be prepared and submitted by the party so ordered. The party preparing the Judgment shall provide a signature line for the other party on the Judgment before the hearing officer's signature.

B. Paragraph 2 must be completed in its entirety and the "contested" box shall be checked.

C. The judgment after trial shall follow the procedures for an order after hearing as set forth in Rule 5.2.16. **(Effective July 1, 2007, Rule 5.3.6 renumbered effective January 1, 2006; adopted as Rule 32.6 effective July 1, 1998)**

5.3.7 Bifurcated Judgment/Status Only

A. A bifurcation of marital status will be granted when the requesting party has completed and served a Preliminary Declaration of Disclosure with all attachments.

B. A bifurcation may be obtained by one of the following:

1. Stipulation and Order for Bifurcation submitted in addition to the following documents:

a. Appearance, Stipulation and Waiver form. The boxes containing the following language must be checked:

1) The parties stipulate that this cause may be tried as an uncontested matter.

2) The parties waive their rights to notice of trial, findings of fact and conclusions of law, motion for new trial, and the right to appeal.

b. Each party must complete and serve a preliminary declaration of disclosure with all attachments.

c. Judgment with "status only" box checked.

d. Notice of Entry of Judgment with "status only" box checked, in addition to the other requirements set forth in these rules.

2. Default--No Appearance

The following forms must be submitted:

a. Petitioner must complete and serve a preliminary declaration of disclosure with all attachments.

b. Declaration for Default or Uncontested Dissolution.

c. Judgment with "status only" box checked.

d. Notice of Entry of Judgment with "status only" box checked, in addition to the other requirements set forth in these rules.

3. Notice of Motion.

The following forms must be submitted:

a. Judgment with "status only" box checked.

b. Notice of Entry of Judgment with "status only" box checked, in addition to the other requirements set forth in these rules.

C. If temporary orders were issued, the Judgment shall state that such orders shall continue in full force and effect until further order of the court. **(Effective July 1, 2007; Rule 5.3.7 renumbered effective January 1, 2006; adopted as Rule 32.7 effective January 1, 2000)**

5.3.8 Uniform Parentage Act Judgment

Judgments by Declaration:

A. Uniform Parentage Judgments by declaration must follow the procedures set forth in Rule 5.3.

B. Default judgments must follow the applicable provisions of Rule 5.3.2. The filing party must submit a completed Advisement of Waiver of Rights form.

C. Judgments by agreement must follow the applicable provisions of Rule 5.3.4. Each party must sign the Stipulation for Entry of Judgment and submit a completed Advisement and Waiver of Rights form.

D. Judgments after hearing or trial must follow the applicable provisions of Rule 5.3.6. **(Effective July 1, 2007, New)**

(Rule 5.3 renumbered effective January 1, 2006; adopted as Rule 32 effective July 1, 1992)

RULE 5.4 CHILD SUPPORT

5.4.1 Minimum Child Support Waiver

All stipulations regarding child support, except where either of the parties or children is receiving public assistance, shall include a signed Family Code § 4065 Waiver. **(Rule 5.4.1 renumbered effective January 1, 2006; adopted as Rule 33.1 effective January 1, 1998)**

5.4.2 Income and Expense Declarations/Financial Statements

A. Income and Expense Declarations/Financial Statements.

If child support, spousal support, family support or attorney's fees are an issue, a current (less than three (3) months old) Income and Expense Declaration form FL-150 must be completed, including the other party's income, or a fair estimate thereof, as well as his or her occupation. If only child support is at issue, then the Financial Statement (Simplified) Judicial Council form FL-155 may be substituted, if appropriate, for an Income and Expense Declaration.

1. Wage earners shall attach the two (2) most recent months of pay stubs for all jobs and the most recent W-2 and/or 1099 to all Income and Expense Declarations/Financial Statements.

2. Self-employed individuals shall attach copies of their Federal Income Tax Schedule C for the last year and profit and loss statements for the current year to all Income and Expense Declarations/Financial Statements. **(Rule 5.4.2 renumbered effective January 1, 2006; adopted as Rule 33.2 effective July 1, 1998)**

5.4.3 Notifying DCSS of Change of Custody

In all cases where DCSS is enforcing child support and there is a change of custody, a copy of the new order shall be mailed to the DCSS within ten (10) days of filing. **(Rule 5.4.3 renumbered effective January 1, 2006; adopted as Rule 33.4 effective July 1, 1992)**

5.4.4 Child Support and the DCSS

A. If public assistance is being received and the court processes a stipulation, order or judgment without the express written approval of a DCSS representative, DCSS may request a judicial review of the child support issue by filing a Notice of Motion within 180 days of the file date of the order. All rights to retroactive adjustment are reserved.

B. Within ten (10) days of the date of filing, conformed copies of ALL orders involving DCSS shall be mailed by the moving party to DCSS, P.O. Box 12946, Fresno, CA 93779-2946, or may be hand delivered to DCSS at 2220 Tulare Street, Suite 310P, Fresno, CA 93721.

C. In any case before the court, the parties shall inform the Judicial Officer if DCSS is involved in child support issues.

D. If either party is receiving public assistance, or if DCSS is or will be enforcing child support, the following language shall appear in ALL stipulations, orders or judgments:

1. Petitioner/Respondent shall pay child support for (name of child) in the sum of $_____ per month, and for (name of child) in the sum of $_____ per month, for a total of $____ per month commencing on (date), and continuing on the _____ day of each and every month thereafter until the child marries, dies, becomes self-supporting, becomes an active member of the armed services, is emancipated, reaches the age of 19 or reaches the age of 18 and is no longer a full-time high school student, or until further order of the court, whichever occurs first.

2. Interest shall accrue on the entire principal balance owing and not on each installment as it becomes due. This is not an installment judgment.

3. No provision of this judgment shall operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

4. Support shall be paid to the State Disbursement Unit.

5. The Fresno County DCSS shall enforce all payments.

6. A Wage and Earnings Assignment Order shall issue for ongoing support and arrearages.

7. Both parties shall:

a. Provide and maintain health insurance coverage for the child(ren) if it is available through employment, a group plan, or otherwise available at no or reasonable cost, and shall keep the DCSS informed of the availability of the coverage;

b. If health insurance is not available, provide coverage when it becomes available;

c. Within 20 days of the request of DCSS, complete and return a health insurance form;

d. Provide to the DCSS all information and forms necessary to obtain health care services for the child(ren);

e. Present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health care services for the child(ren).

8. Unreimbursed medical, drug, dental, orthodontic and vision expenses shall be shared equally (one-half each) by the Petitioner and Respondent, and the parties shall comply with the provisions of Family Code § 4063 regarding payment and reimbursement of the unreimbursed costs.

9. A Health Insurance Coverage Assignment shall issue.

10. Petitioner/Respondent shall provide written notification to the Clerk of any change in residence and to DCSS of any change of residence, income, or employment within ten (10) days.

E. An Order/Notice to Withhold Income for child support must issue. **(Effective July 1, 2007; Rule 5.4.4 renumbered effective January 1, 2006; adopted as Rule 33.5 effective July 1, 1998)**

5.4.5 Motions to Determine Arrears and DCSS

A. The court encourages parties to meet and confer with DCSS before filing a motion to determine arrears. If the issues cannot be resolved, the moving papers shall specify the nature and amount of the dispute, and shall identify, if possible, the specific errors in DCSS calculations.

B. The party shall serve DCSS with the moving papers and shall then personally contact DCSS at least ten (10) working days before the hearing in an attempt to resolve or limit the issues.

C. All parties shall comply with the provisions of Family Code § 17526(c). **(Rule 5.4.5 renumbered effective January 1, 2006; adopted as Rule 33.6 effective July 1, 1998)**

(Rule 5.4 renumbered effective January 1, 2006; adopted as Rule 33 effective July 1, 1992)

RULE 5.5 CHILD CUSTODY, VISITATION AND MEDIATION

5.5.1 Mediation

A. Purpose of Mediation. The purpose of the mediation proceeding is:

1. To reduce acrimony which may exist between the parties;

2. To develop a custody/visitation plan which assures the minor child(ren) of close and continuing contact with both parents, which is in their best interests;

3. Mediation shall occur before a Family Assessment or a Custody Investigation;

B. **Mandatory Mediation re: Child Custody and Visitation**. All contested custody and visitation matters shall be scheduled for mediation through Family Court Services or a private mediator. The mediator shall use his or her best efforts to settle the custody or visitation dispute.

C. Proceedings. Mediation and family assessments shall be held in private between the mediator, the parties and/or the children. Attorneys shall not participate in mediation. **(Effective July 1, 2007; Rule 5.5.1 renumbered effective January 1, 2006; adopted as Rule 34.1 effective July 1, 1999)**

5.5.2 Child Custody and Visitation Mediation

A. Definitions

1. Mediation: Mediation may be provided free of charge in one of three settings:

a. Pre-Court Mediation: Mediation that takes place before the custody/visitation hearing.

b. At-Court Mediation: Mediation which takes place at the same time as the custody/visitation hearing.

1) Where one of the parties lives beyond a 250-mile radius of the Fresno County Courthouse, at court mediation may be granted.

2) At the discretion of the Judicial Officer.

c. Post-Court Mediation: Mediation which takes place after the initial custody/visitation hearing or upon a further referral to mediation.

2. **Family Assessment**. Extended interview with parties, children and any additional contacts deemed necessary by the court to evaluate issues presented during mediation. A fee will be charged for a family assessment.

3. **Custody Investigation**. In depth investigation involving interviews with all parties and children, collateral witnesses, and/or home studies which may only be ordered by the court in the event a family assessment is not successful.

A fee will be charged for a custody investigation. A substantial deposit may be required when the court orders custody investigation.

4. **Child Custody Evaluation**. In depth investigation involving interviews with all parties, children, and collateral witnesses and psychological testing by a licensed clinician as approved by Family Court Services.

a. All child custody evaluations that are part of the Family Assessment or the Custody Investigation shall be completed within the time period set forth by the court. In the event a child custody evaluation is not completed within the time set forth by the court, the referral by Family Court Services may be terminated and the current orders regarding custody and visitation shall remain full force and effect until further order of the court.

b. If Family Court Services receives a child custody evaluation where one party participates and the other party does not complete the child custody evaluation, the completed portion of the child custody evaluation may be considered. **(Effective July 1, 2007; Rule 5.5.2 renumbered effective January 1, 2006; adopted as Rule 34.2 effective July 1, 1999)**

5.5.3 Fees for Services

A. There will be a fee for all services provided by Family Court Services, except for mediation. Mediation is limited to no more than two (2) hours of the mediator's time.

B. When the court orders a Family Assessment/Custody Investigation, the parties shall complete all FCS Financial Declaration forms for waiver of fees or submit deposits to FCS within thirty (30) calendar days of receipt of the notification of the deposit required.

C. The parties shall be charged for child custody evaluation consistent with their ability to pay. In the event a private child custody evaluator is assigned to the case, the parties shall share equally in the costs of the evaluation, which shall be paid directly to the evaluator, unless otherwise directed by the court. The costs of the child custody evaluation shall be subject to reallocation by the court at a later date. **(Effective July 1, 2007; Rule 5.5.3 renumbered effective January 1, 2006; adopted as Rule 34.3 effective July 1, 1998)**

5.5.4 Orders to Show Cause/Notices of Motion

In all hearings where custody or visitation is a contested issue, the parties shall attend mediation through Family Court Services or a private mediator.

A. **Attendance at FCS Orientation and Mediation**. When FCS provides mediation, all parties shall personally attend the orientation and mediation.

1. A party who resides beyond a 250-mile radius of the Fresno County Courthouse, Central Division, may be excused from attending orientation with advance, written notice to Family Court Services.

2. In the event one of the parties resides beyond the 250-mile radius of the Fresno County Courthouse, Central Division, that party may request mediation concurrent with the time of the hearing.

3. Telephone mediation may occur when either party (1) resides beyond a 250-mile radius of the Fresno County Courthouse, Central Division, (2) will suffer an extreme hardship by traveling to FCS for mediation, (3) when ordered by the court, or (4) with good cause, at the discretion of FCS. The request for telephone mediation shall be made a minimum of seven (7) days in advance of mediation.

4. If the parties have not reached an agreement and the matter has not been mediated at the time of the hearing, the court shall refer the matter to Family Court Services for mediation unless a readiness hearing date is scheduled.

B. **Obtaining Date and Serving the Other Party**. The dates and times for Family Court Services' orientation and mediation shall be obtained from the Calendar Clerk and shall be set forth on a completed FCS Orientation and Mediation Court form. The completed FCS Orientation and Mediation Court form shall be attached to and served with the moving papers. Service of the completed FCS Orientation and Mediation Court form shall be reflected on the proof of service.

C. **Completion of Pre-Court Mediation**. When all parties participate in mediation, the Family Court Services mediator shall submit a proposed order to the court. If the proposed order has been completed, copies of the proposed order may be made available to the parties, at the Clerk's Office two (2) calendar days before the court hearing. If the proposed order is not available before the hearing, it shall be available in court at the time of the hearing.

D. **Completion of Post-Court Mediation**. The Family Court Services mediator's proposed order shall be submitted to the court and the parties/attorneys within two (2) months after the case has been mediated.

E. **Completion of Family Assessment or Custody Investigation**. The Family Court investigator's proposed order shall be submitted to the court and the parties within three (3) months after the Family Assessment/Investigation has been completed.

F. Availability of Information. Certain information may be attached to the court copy of the proposed order only. This information may include the following:

1. Minor's confidential statement;

2. Psychological reports;

3. Medical reports of the parties, including results of drug testing or assessments;

4. Probation or CLETS (California Law Enforcement Telecommunication Systems) information.

If the parties wish to see any of the above listed information, the judge may make the requested information available to the parties with appropriate protective orders.

G. **New Mediation Referrals. No request for mediation may be made within six (6) months from the date an Order for Child Custody/Visitation was made unless approved by the court.**

H. Independent and/or Second Opinions. Child(ren) shall not be taken by a party to a new evaluator/therapist for an independent or second opinion during the court process of a custody dispute except as ordered by the court.

I. Cancellation or Rescheduling of Orientation, Mediation Dates. After a mediation appointment has been set, neither party may change the mediation appointment without good cause. The party requesting the change must notify the other party of the need for the charge. All requests for cancellation or rescheduling of orientation or mediation dates are handled exclusively through FCS and must be approved by Family Court Services before any changes. Both parties/attorneys must contact Family Court Services before any change will be approved. **(Effective July 1, 2007, Rule 5.5.4 renumbered effective January 1, 2006; adopted as Rule 34.4 effective July 1, 1999)**

5.5.5 Children's Attendance at Mediation

All children five (5) years old or older shall be brought to the mediation. The child may be interviewed at the discretion of the mediator. **(Rule 5.5.5 renumbered effective January 1, 2006; adopted as Rule 34.5 effective July 1, 1999)**

5.5.6 Children at Court

Minor child(ren) shall **NOT** be brought to the court hearing. In the event the child(ren) are required to be present in order to comply with Rule 5.5.5 above for at-court mediation, then the child(ren) shall be available to be transported to the court upon request. **(Rule 5.5.6 renumbered effective January 1, 2006; adopted as Rule 34.6 effective July 1, 1998)**

5.5.7 Objections to Family Court Services Proposed Order

A. **Objections to Pre-Court or At-Court Mediation Proposed Orders**. Objections to the Family Court Services' proposed order made on the record in open court shall be considered for purposes of an order for custody/visitation made at that court hearing. If, in the discretion of the court, the objection is sufficiently serious to

require a further evidentiary hearing, the objecting party or parties shall have fifteen (15) days from the date of the court hearing to file a written objection to the proposed order. The objection shall be in compliance with the provisions set forth in Rule 5.5.7(B). If no objection is filed within fifteen (15) days from the date of the hearing, the proposed order may become the order of the court without further hearing on the matter.

B. **Objections to Post-Court Mediation / Family Assessment / Custody Investigation Proposed Orders**. In the event one or both of the parties object to the proposed order, the objecting party must **file** a written objection to the proposed order with the Clerk no later than twenty (20) days after the date of mailing or faxing or receipt of the hand delivered proposed order in court. A copy of the written objection and all enclosures shall be mailed to the opposing party and FCS, and proof of service shall be filed with the court. If the twenty (20) day period expires without objection, the proposed order may be signed and filed as an order of the court. **FAXED OBJECTIONS WILL NOT BE ACCEPTED.**

Objections to a proposed order **MUST BE TYPEWRITTEN** or **PRINTED NEATLY ON AN APPROVED LOCAL OBJECTION FORM** and **SHALL** set forth the following:

1. The case name **and** case number;

2. Each paragraph number in the proposed order to which the objection is made;

3. Proposed alternate language to each paragraph to which the party objects;

4. Reasons for the suggested change:

   a. **The statement "It is in the best interest of the child(ren) to make the change" IS INSUFFICIENT.**

   b. **Absent extraordinary circumstances, only those specific sections of the proposed order to which an objection is made may be considered by the court.**

5. A copy of the proposed order being objected to **MUST BE ATTACHED**.

6. The objection must contain the name, address, and a telephone number of the party and must be signed by the objecting party.

C. **Amendment of Objections**. If the objection does not contain the required information as set forth in (B)(1)-(6) above, the court may reject and return the objection. The court shall notify the objecting party that the written objection is improper. The objecting party shall have ten (10) days from the date of mailing to

amend the objection and forward it to the Clerk's Office. If the objecting attorney/party fails to submit the amended objection within the time allowed, or fails to comply with the procedures the second time, the proposed order may be signed and filed as an order of the court.

D. **Effort to Settle Differences**. Prior to the initial hearing/appearance on objection, the parties and their respective attorneys shall meet at an Office Settlement Conference to attempt to settle the custody/visitation issues. Attendance at the Office Settlement Conference and the initial hearing/appearance on objection is MANDATORY.

E. **Hearing Date**. If the custody/visitation issues are not resolved at the initial hearing/appearance on objection, then, at the court's sole discretion, the matter may be set for evidentiary hearing. During the pendency of the objection, no new mediation shall be calendared without court approval upon the showing of substantial and material changed circumstances.

F. **Temporary Orders**. The court shall have jurisdiction to make temporary orders at the initial hearing/appearance on objection pending further order of the court. Live testimony shall not be permitted at the initial hearing/appearance on objection. **(Effective July 1, 2997; Rule 5.5.7 renumbered effective January 1, 2006; adopted as Rule 34.7 effective January 1, 2002)**

5.5.8 Availability of Family Court Counselors for Testimony

A. The Fresno County Superior Court charges witness fees whenever a court employed mediator is subpoenaed to testify in a civil case.

B. To subpoena a mediator to appear, the following must be delivered to Family Court Services, as the authorized agent at least ten (10) days prior to the hearing:

1. The original and one copy of the subpoena to appear;

2. A check in the amount of $150.00 made payable to Fresno County Superior Court.

C. An hourly fee will be charged in all cases in which a Fresno County Mediator appears in court. Charges are assessed for time the mediator is on call and unable to attend to other duties.

Any unused monies will be returned to the depositing party. If expenses exceed the deposit, the difference shall be paid to Family Court Services.

D. If the FCS Mediator's testimony is no longer required, then the FCS Mediator must immediately be informed.

E. Unless otherwise directed, FCS Mediators will be on call rather than personally present in Court.

F. In the event the matter is continued, the previously subpoenaed FCS Mediator may be ordered back to the continued hearing date and shall be available at FCS on an "on call" basis. If the mediator is required to testify, the notification to appear at the continued hearing may be made by telephone. The party who subpoenaed the mediator shall forward a letter to Family Court Services confirming the continued hearing date and shall set forth the parties' names, the Fresno County Superior Court case number, the name of the mediator and the continued hearing date. **(Effective July 1, 2011; Rule 5.5.8 renumbered effective January 1, 2006; adopted as Rule 34.8 effective July 1, 1998)**

5.5.9 Matters Off Calendar and Stipulations

A. A hearing relating to child custody or visitation shall not be removed from calendar after mediation or evaluation without the consent of all parties. If the matter has been removed from the calendar in violation of this rule, the court may hear the matter as calendared or the matter may be submitted and the proposed order may be made an order of the court.

B. If the matter is taken off calendar or the objection is withdrawn, the proposed order may be made an order of the court.

C. If a hearing relating to child custody/visitation is vacated and mediation is pending and not cancelled, then mediation shall be deemed post-court mediation and the proposed order shall be subject to the twenty (20) day objection.

The FCS recommendation will not be signed as the order of the court. When the signed stipulation is submitted to the Clerk, the Clerk must be told of the hearing date so that the Clerk can take the matter off calendar.

D. Before withdrawing an objection, the objecting party shall notify the Clerk in the department where the matter is set, the responding party and **Family Court Services** that the objection is withdrawn. A confirming letter shall be forwarded to the court, Family Court Services, and all parties.

E. If the Court Settlement Conference Regarding Objections is taken off calendar or the objecting party does not appear at the Court Settlement Conference, the matter may be submitted on the proposed order and the court may, in its discretion, adopt the proposed order and make it an order.

F. If there is a stipulation that resolves the issues, the stipulation and order shall be submitted for signature to the Fresno County Superior Court Clerk. Pending receipt by the court of the stipulation and proposed order, the hearing or Court Settlement Conference may be continued to a specified date. The stipulation shall be submitted at least ten (10) calendar days before the continued hearing date and the Clerk must be informed of the continued hearing date so that the Clerk can take the matter off calendar. **(Effective July 1, 2007, Rule 5.5.9 renumbered effective January 1, 2006; adopted as Rule 34.9 effective January 1, 2000)**

5.5.10 Removal of Children in Violation of a Court Order

If the minor child(ren) is/are removed by either party under circumstances which violate the custody or visitation order, and that violation establishes probable cause to believe that a crime has been committed, the court may award physical custody ex parte to the parent deprived of a custody or visitation right prior to mediation. **(Rule 5.5.10 renumbered effective January 1, 2006; adopted as Rule 34.10 effective July 1, 1992)**

5.5.11 Requests for Change of Mediator

A. The assignment of mediators is an administrative function of Family Court Services. Mediators are assigned on a predetermined rotational basis, except by specific order of the court.

B. Peremptory challenges to FCS mediators shall not be permitted.

C. A change of mediator may be granted by FCS in the following situations:

1. Upon a referral of the case for a family assessment and/or custody investigation.

2. When a conflict of interest exists:

a. Where the mediator has personal knowledge of the matter or parties outside of the mediation context;

b. Where the mediator has a financial interest in the potential outcome of the matter;

c. Where the mediator is related to the parties within the third degree;

d. Where there is a substantial doubt as to the impartiality of the mediator.

D. The process for changing a mediator is as follows:

1. A request for a change of mediator must be made no later than fifteen (15) calendar days from the date the court orders the family assessment and/or custody investigation. The objection shall be typewritten or printed neatly and shall set out the specific reasons the change is requested. The original request shall be mailed to FCS with a copy to the opposing party. **FAXED OBJECTIONS WILL NOT BE ACCEPTED.**

2. FCS shall respond in writing to the request for a change of mediator within ten (10) calendar days of the request, with copies mailed or faxed to all parties. **(Rule 5.5.11 renumbered effective January 1, 2006; adopted as Rule 34.11 effective July 1, 1998)**

5.5.12 Child Custody Evaluations

The Fresno County Superior Court has the discretion to appoint a Child Custody Evaluator to conduct a child custody evaluation in all child custody/visitation matters.

A. **Peremptory Challenge of Child Custody Evaluator**. The court may allow one peremptory challenge to the Child Custody Evaluator as follows:

1. If the appointment is made in a hearing before the court, the challenge **MUST** be made at the time of hearing.

2. If the appointment is to be made pursuant to a twenty (20) day objection, then the challenge must be made within the twenty (20) day objection period by including the challenge as an objection pursuant to Local Rule 5.5.7.

B. **Withdrawal of Child Custody Evaluator**. The Child Custody Evaluator may request to be allowed to withdrawn from an evaluation at any stage of the process for the following reasons:

1. Conflict;

2. Nonpayment of fees;

3. Lack of cooperation by a party;

4. Any other significant reason which prevents the Child Custody Evaluator from completing the evaluation.

If the Child Custody Evaluator wishes to be removed from the case, the Child Custody Evaluation shall forward a letter to Family Court Services specifically stating the reasons for the request. Family Court Services shall review the letter and forward copies of the request to the parties and to the court. The parties shall have twenty (20) days to file a motion challenging the request. If no motion is filed, the court may grant or deny the request for withdrawal and Family Court Services shall notify the Child Custody Evaluator and the parties of the court's decision. **FAXED LETTERS WILL NOT BE ACCEPTED.**

C. Complaints about Child Custody Evaluator. Complaints about a Child Custody Evaluator's performance shall be in written form. The complaint shall detail all reasons for the complaint and shall set forth specific examples of the acts or omissions by the Child Custody Evaluator. The complaint shall be sent to Family Court Services. Family Court Services shall review the letter and forward copies of the complaint to each party and to the court. **FAXED LETTERS WILL NOT BE ACCEPTED.**

D. **Ex Parte Communications**. Neither party may contact the Child Custody Evaluator, directly or through the party's attorney, except regarding procedural matters such as setting appointments. Neither party shall forward any documents to the Child Custody Evaluator except by order of the court or at the specific request of the Child Custody Evaluator. During the evaluation process, any documents provided to the Child Custody Evaluator shall also be provided to the opposing party at the same time.

The Child Custody Evaluator shall have sole discretion to conduct ex parte communications with any party, witness, attorney, mediator, counselor, therapist, physician, teach, law enforcement officer or any other person that the Child Custody Evaluator determines is necessary to complete the evaluation process. No third party shall contact the Child Custody Evaluator unless requested to do so by the Child Custody Evaluator or by order of the court for procedural matters only.

After the evaluation has been completed and the report has been written, the Child Custody Evaluator may communicate with the parties or their attorneys as the Child Custody Evaluator determines. **(Rule 5.5.12 renumbered effective January 1, 2006; adopted as Rule 34.12 effective July 1, 2001)**

(Rule 5.5 renumbered effective January 1, 2006; adopted as Rule 34 effective July 1, 1992.

RULE 5.6 CHILD CUSTODY, VISITATION, AND THE DISTRICT ATTORNEY

5.6.1 District Attorney's Role

The District Attorney does not represent either party in a custody/visitation dispute. The primary purpose of the Child Abduction Unit of the District Attorney's Office is to enforce the orders of the court through the full use of civil and criminal remedies available.

The District Attorney of Fresno County (hereinafter referred to as District Attorney) acts on behalf of the court in enforcement of specific child custody and child visitation orders. The Fresno County District Attorney may advise the appropriate department of its findings regarding the facts of a custody/visitation situation. Such orders may arise from the Juvenile Division, Probate Department, Family Law Department, or other appropriate department or division. **If a conflict arises between two (2) or more custody/visitation orders, the hierarchy of enforcement of custody orders is as follows:**

1. Juvenile Court Orders.

2. Adoption and Parental Termination Orders.

3. Order for Guardianship of person when it was issued prior to a family law order.

4. a. Family Law Orders;

b. Order pursuant to the Uniform Parentage Act.

5. Domestic Violence Orders.

If a conflict occurs between any such orders, the parties shall immediately inform each of the respective Departments, the District Attorney, and other parties. For the purposes of this section "District Attorney" includes the Child Abduction Unit (CAU) of the Fresno County District Attorney's Office. **(Rule 5.6.1 renumbered effective January 1, 2006; adopted as Rule 35.1 effective January 1, 1999)**

5.6.2 Request for District Attorney Services

A party requesting the District Attorney to locate and/or return a child, or locate the other party, shall fully complete the necessary questionnaire and submit all supporting documents required. The requesting party shall notify the District Attorney of any changes of address and/or phone number within two (2) working days. Complete and continuing cooperation is required from the requesting party to obtain continuing assistance. The requesting party must also immediately notify the District Attorney of any other changes of circumstances or of the recovery of the child.

A party who knows where the child is, but is experiencing difficulty in exercising court ordered visitation, may make application for assistance to the CAU. The supporting police report should document the custody/visitation violation, rather than a missing person report.

If a requesting party does not fully cooperate, the District Attorney may terminate its efforts. **(Rule 5.6.2 renumbered effective January 1, 2006; adopted as Rule 35.2 effective January 1, 1999)**

5.6.3 Function of the District Attorney

A. The best interest of the child(ren) is the primary concern.

B. The District Attorney shall maintain an investigative file, which, upon request **by the court**, shall be made available to the court. This file is confidential. If a party wants to examine any information in the file that party must make a noticed motion.

C. Before the District Attorney may enforce a custody/visitation right, the complaining party must file a police report and if the location of the child(ren) is unknown, file a missing person report with their local police agency. **(Effective July 1, 2007; Rule 5.6.3 renumbered effective January 1, 2006; adopted as Rule 35.3 effective July 1, 1998)**

5.6.4 Special Issues

A. The Fresno County District Attorney may conduct its own investigation before implementing or enforcing any custody/visitation order. A party may submit his or her supporting documentation directly to the Fresno County District Attorney to expedite the process.

B. If a child is unlawfully concealed within or outside the County of Fresno, or the State of California, the District Attorney's Office will, upon request, try to locate and return the child to the parent having legal custody pursuant to a valid enforceable court order.

WARNING: Orders under the Domestic Violence Act may not be enforceable outside of California. In the past, other states have failed to recognize such orders under the UCCJEA.

C. Before the District Attorney will consider enforcing an order, the District Attorney will consider the *status quo.* A current UCCJEA form (signed under penalty of perjury) must be submitted to the District Attorney.

WARNING: The District Attorney may not be able to enforce orders where the terms are ambiguous and/or unclear.

D. If the requesting party has not exercised or attempted to exercise his or her right to custody and/or visitation for a significant period of time, no action will be taken by the District Attorney until a new order is made. **(Rule 5.6.4 renumbered effective January 1, 2006; adopted as Rule 35.4 effective January 1, 1996)**

5.6.5 Orders to Locate and Return

The requesting party must first apply and cooperate with the District Attorney's Office CAU for assistance in location and returning a minor child.

To obtain the assistance of the District Attorney's Office to locate and/or return a minor child, the requesting party must have a valid custody order, either temporary or permanent, which is enforceable under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The requesting party has the duty to provide the District Attorney with a certified copy of the order.

In situations where the whereabouts of the child(ren) are unknown, the requesting party must first:

A. Contact the appropriate local law enforcement agency and make a "Missing Person's Report" and obtain the report number.

B. Contact the Child Abduction Unit of the Fresno County District Attorney's Office and:

1. Complete the Child abduction/Visitation questionnaire.

2. Complete the Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act.

3. Provide the police report number.

4. Submit a certified copy of the valid custody order.

In situations where the location of the child(ren) is known, the requesting party must file a police report and do all of the above, except file a missing persons report.

C. If any party seeks a Family Code § 3130 order, counsel must file a notice of motion or obtain an order to show cause.

The motion shall contain a declaration, which sets forth facts required. If premises are to be searched for the child(ren), the address and supporting information where the child(ren) can be found shall be included in the declaration and proposed order. The matter may then be referred to the District Attorney by the court for investigation.

The District Attorney, if properly noticed, shall appear at the hearing for the purpose of assisting the court.

The District Attorney will prepare the Order, either after hearing or upon conclusion of motion brought by private counsel or upon ex parte declaration by the District Attorney's Office, unless the court directs otherwise.

The Order shall contain the following:

1. The Fresno County District Attorney shall take all action necessary to locate and physical retrieve the minor child(ren) (name of child(ren)), born (date of birth), and place the child in the custody of (petitioner/respondent), **a responsible relative** or DCSS, or pursuant to further order of the court.

2. The District Attorney shall retain private counsel or other legal services to represent the District Attorney's Office or this court to enforce the provisions of the Uniform Child Custody Jurisdiction Act, the Hague Treaty or other treaties involving child access rights, in other states and countries where the child is found, if the District Attorney deems it necessary.

3. The District Attorney shall enforce compliance with custody/visitation orders in the proper jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the Federal Parental Kidnapping Act, (28 U.S.C. 1738A) and the Hague Convention on International Child Abduction (42 U.S.C. 11601 et seq.).

4. (Petitioner/Respondent) is granted temporary exclusive physical custody of (name of child(ren)).

5. The District Attorney may enforce all orders for visitation and custody including criminal prosecution.

6. The State of California shall reimburse the County of Fresno for the cost involved in enforcing child custody/visitation orders.

7. The parties shall be jointly and severally liable to reimburse the State of California (through the County of Fresno) for all cost incurred in returning the child(ren), including, but not limited to rendering treatment for reunification counseling, housing and foster care incurred by Child Protective Services, attorney fees, medical cost and enforcing this order. The court reserves jurisdiction to allocate the cost between the parties. Any party may bring the issue of allocation before the court by noticed motion to all parties and the District Attorney.

8. The Fresno County District Attorney shall search the premises at (addresses) for the purpose of determining whether the minor child(ren) is/are preset and retrieving the minor child(ren).

9. The child(ren) shall not be taken or removed from the State of California, for any purpose until further order of this court.

10. If at the time of retrieval of the child(ren), allegations of child abuse or neglect are made, the District Attorney's Office shall:

A. Place the minor child(ren) with a suitable relative of the children and bring a motion to join the relative in the action.

B. If there is no suitable relative available, to place the child(ren) with DCSS, who shall investigate the allegations and take appropriate action. DCSS shall bill the District Attorney's Office for the cost of housing and foster care and shall maintain custody over the children until further order of this court or the Juvenile Court.

C. The District Attorney shall also initiate a "good cause" investigation addressing the allegations and take appropriate action.

11. Immediately upon placement, the District Attorney shall bring any issues of custody/visitation, child abuse, neglect, endangerment and joinder before this court for further orders.

12. Upon recovery of the children a copy of this Application and Order herein shall be served on <u>all parties</u> and all parties are ordered to contact Family Court Services for mediation.

13. The contents of this order and supporting documents are confidential and prior to the recovery of the child(ren) are not to be revealed to anyone except individuals necessary to achieve the effect of this order. **<u>The</u>**

Clerk shall seal this document until notified by the District Attorney's Office that the child(ren) have been recovered.

14. Any previous orders issued in this action, consistent with this order, shall remain in full force and effect.

If the custodial parent is not represented by counsel, the District Attorney may, where appropriate, prepare the application to obtain the order to locate and return the minor child.

If the child is in the control or possession of a non-party, other procedures may be required. **(Effective July 1, 2007; Rule 5.6.5 renumbered effective January 1, 2006; adopted as Rule 35.5 effective January 1, 2000)**

5.6.6 Order to Only Locate

The District Attorney will, upon request of an aggrieved party who complies with Rule 5.6.5, take all necessary actions to locate the other party and child(ren). **(Rule 5.6.6 renumbered effective January 1, 206; adopted as Rule 35.6 effective July 1, 1992)**

5.6.7 Notice to the Court

Upon location of the other party and/or child(ren), the District Attorney may report to the appropriate court and seek further direction.

In the event the District Attorney brings this matter before the court by complaint, petition, notice of motion or order to show cause, the District Attorney shall appear at the first hearing date to assist the court. The District Attorney shall not represent either party at any hearing. **(Rule 5.6.7 renumbered effective January 1, 2006; adopted as Rule 35.7 effective July 1, 1996)**

5.6.8 Visitation

If an order for child custody or visitation is unenforceable due to vagueness or ambiguity or if there has been a significant change of circumstances, the CAU may apply ex parte and obtain a court order referring the matter to FCS for mediation. CAU shall notice each party of the order of the court referring the issues to FCS. **(Rule 5.6.8 renumbered effective January 1, 2006; adopted as Rule 35.8 effective July 1, 1996)**

5.6.9 Good Cause Filings

"Good cause", "domestic violence", and "emotional harm", may be recognized as a defense to temporarily concealing a child to protect a child from another person having a right to custody/visitation.

A. A person having a good faith and reasonable belief that a child may be endangered if a custody right is enforced shall file a report with the District Attorney in a reasonable time. This filing shall not invalidate a court order but, upon the District Attorney's discretion, may delay the enforcement of an order by the District Attorney for

no more than thirty (30) days to provide the party an opportunity to bring the issue before the court. This party is hereafter called the "complaining party" and the other party is the "responding party".

B. The address of the complaining party shall remain confidential until released by the court.

C. The complaining party shall file an Order to Show Cause requesting a determination of custody and visitation rights with the court within thirty (30) days of the date they reported the "good cause" to the District Attorney.

D. The District Attorney shall immediately initiative an investigation into the validity of the "good cause" report. The investigative findings shall be made available to the court and/or Family Court Services.

E. The District Attorney shall notify the court that a "good cause" report has been made.

F. NO "good cause" report shall be filed in conjunction with any other court documents or moving papers.

G. The delay of enforcing a custody/visitation right shall not be extended past the thirty (30) day period.

H. If the complaining party fails to prove up his "good cause" at the time of the hearing, the court may order that the injured party be allowed to make up all of the time missed for visitation.

I. If the complaining party made a knowingly false report, the court may consider this fact as the basis for a change of custody or as evidence in a contempt proceeding. **(Rule 5.6.9 renumbered effective January 1, 2006; adopted as Rule 35.9 effective July 1, 1998)**

5.6.10 Confidentiality of District Attorney Files

Any party requesting information from a District Attorney confidential file must file a noticed motion. **(Rule 5.6.10 renumbered effective January 1, 2006; adopted as Rule 35.10 effective July 1, 1992)**

5.6.11 Availability of District Attorney Investigators for Testimony

A. The County of Fresno charges witness fees whenever a county employed District Attorney investigator is subpoenaed to testify in a civil case.

B. To subpoena a District Attorney investigator to appear, the following must be delivered to the CAU, as the authorized agent:

1. The original and one (1) copy of the subpoena to appear.

2. A check in the amount of $150.00 made payable to Fresno County District Attorney.

C. The County of Fresno shall be reimbursed for expenses, such as salary and other compensation for the time a Fresno County employee serves as a witness. An hourly fee will be charged in all cases in which a CAU appears in court. Charges are assessed for time the CAU is on call and unable to attend to other duties.

Any unused monies will be returned to the depositing party. If expenses exceed the deposit, the difference shall be paid to Fresno County District Attorney.

D. If matters are taken off calendar, the CAU must immediately be informed.

E. Unless otherwise directed, the CAU will be on call rather than personally present in court.

F. In the event the matter is continued, the previously subpoenaed CAU may be ordered back to the continued hearing date and shall be available at District Attorney's office on an "on call" basis. If the Mediator is required to testify, the notification to appear at the continued hearing may be made by telephone. **(Rule 5.6.11 renumbered effective January 1, 2006; adopted as Rule 35.11 effective July 1, 1998)**

(Rule 5.6 renumbered effective January 1, 2006; adopted as Rule 35 effective July 1, 1992)

RULE 5.7 SETTLEMENT CONFERENCES

5.7.1 Mandatory Procedure

A. Court settlement conferences are mandatory and will be scheduled by the Calendar Clerk. A trial date will not be set except by the Judicial Officer at the time of the court settlement conference and after a determination that no further court settlement conferences will settle the case. The trial date will be set a reasonable time after the last court settlement conference. This section may not apply to actions filed by the DCSS.

B. Office settlement conferences are also mandatory and shall be conducted before the Court Settlement Conference.

C. **IT IS THE POLICY OF THIS COURT TO SETTLE CASES AND ISSUES TO THE EXTENT LEGALLY POSSIBLE. COMPLIANCE WITH THESE SETTLEMENT CONFERENCE RULES, ATTENDANCE AT BOTH OFFICE AND COURT SETTLEMENT CONFERENCES, AND FULL PREPARATION BY BOTH PARTIES AND ATTORNEYS ARE MANDATORY. SANCTIONS WILL BE IMPOSED FOR NONCOMPLIANCE.**

D. Preliminary Declaration of Disclosure Requirement. The settlement conference shall not be calendared if the party filing the At Issue Memoranda has not served his or her Preliminary Declaration of Disclosure and filed the Declaration

regarding service of the Declaration of Disclosure. **(Rule 5.7.1 renumbered effective January 1, 2006; adopted as Rule 36.1 effective July 1, 1998)**

5.7.2 Office Settlement Conference

Before the Court Settlement Conference, the parties and their respective attorneys shall conduct an office settlement conference together with the appropriate accountants and other experts to attempt to settle all issues of the case. Attendance is **MANDATORY**. This rule does not apply if any case involves allegations of domestic abuse and neither party is represented by an attorney.

A. The parties and their attorneys shall complete an AFFIDAVIT OF COMPLETED OFFICE SETTLEMENT CONFERENCE, which shall be attached to the Court Settlement Conference Statement.

B. The parties and their attorneys shall exchange information and documents required to be produced at the Court Settlement Conference. **(Rule 5.7.2 renumbered effective January 1, 2006; adopted as Rule 36.2 effective July 1, 1998)**

5.7.3 One Setting Per Day

A. An attorney (except for a deputy district attorney) shall not be set for more than one (1) court settlement conference per day.

B. If the Calendar Clerk inadvertently double-sets an attorney, it shall be that attorney's obligation to immediately inform the Clerk and the opposing party, and attempt to obtain an alternate date. The parties are expected to cooperate in selecting an alternate date. **(Rule 5.7.3 renumbered effective January 1, 2006; adopted as Rule 36.4 effective July 1, 1998)**

5.7.4 Attendance

All parties and their attorneys shall attend the Court Settlement Conference. Attendance cannot be avoided by agreement of the parties. Under extraordinary circumstances, the court may allow a party to appear telephonically. **(Rule 5.7.4 renumbered effective January 1, 2006; adopted as Rule 36.5 effective July 1, 1998)**

5.7.5 Removing Case from Calendar

If a case settles before the Court Settlement Conference, both parties shall provide written notification to the clerk to remove the matter from calendar. **(Rule 5.7.5 renumbered effective January 1, 2006; adopted as Rule 36.6 effective July 1, 1992)**

5.7.6 Completion of Discovery

All discovery should be completed in advance of the Court Settlement Conference. **(Rule 5.7.6 renumbered effective January 1, 2006; adopted as Rule 36.7 effective July 1, 1992)**

5.7.7 Continuances Disfavored

Requests for continuance of the Court Settlement Conference are strongly disfavored. **(Rule 5.7.7 renumbered effective January 1, 2006; adopted as Rule 36.8 effective July 1, 1992)**

5.7.8 Court Settlement Conference Statements

The form and content of Court Settlement Conference Statements shall comply with the following:

A. **Case Name and Number**. The case name and number shall appear on all pages.

B. **Introduction**. The introduction shall contain the date and time set for the court settlement conference and the names of the attorneys and parties they represent.

C. **Statistical Information**. This section shall contain a summary of the statistical facts of the marriage:

1. Date of marriage;

2. Date of separation;

3. Duration of the marriage;

4. Ages and occupations of the parties;

5. Name(s) and age(s) of the child(ren);

D. **Prior Orders**. This section shall contain a brief summary of all relevant prior orders of the court.

E. **Child Custody/Visitation**. If child custody or visitation is at issue, all relevant facts concerning these issues shall be set forth in full, along with the proposed order. If there are no issues regarding child custody or visitation, this section shall contain a sentence stating “No Child Custody/Visitation issues.”

F. **Child Support**. If child support is at issue, a current Income and Expense Declaration shall be attached. All relevant facts shall be discussed including the guideline support amount and reasons, if any, for deviating from that guideline. Any public assistance involvement must be revealed. If there are no issues regarding child support, this section shall contain a sentence stating “No child support issues.”

G. **Spousal Support**. If spousal support is at issue, a current Income and Expense Declaration shall be attached. The items required to be considered by the court pursuant to Family Code § 4320 shall be set forth and briefly discussed. If there

are no issues regarding spousal support, this section shall contain a sentence stating "No spousal support issues."

H. **Attorney Fees and Costs**. If attorney fees are at issue, a current Income and Expense Declaration shall be attached with Item 19 of Expense Information completed. The number of hours worked, the hourly rate, an itemization of court costs and expert fees shall be set forth, concluding with a specific request. In addition, a method of payment of such fees and costs shall be proposed. If there are no issues regarding attorney fees, this section shall contain a sentence stating "No attorney fees issues."

I. **Community Property and Debt Division**. Each party shall prepare a Settlement Conference Statement, which shall include:

1. A community balance sheet, which sets out each item of community property and debt to be divided.

a. The fair market value of each item and the amount of each debt,

b. The proposed recipient of each item.

c. The equalization payment, if any, required to equalize the division of community property, and

d. Any offsets to the equalization payment.

2. State whether there is a dispute regarding the property or debt, and indicate the nature of the dispute, if any.

3. In the event there is a claim of separate property, list each item and state the basis of the separate property claim.

J. **Separate Property**. If either party claims there is separate property, the items claimed to be separate property and the legal basis for the claim shall be set forth in full. If there is a claimed apportionment of an asset between separate and community interest, the exact percentages or dollar amounts shall be set forth, followed by a clear explanation of the basis for the proposed division. If there are no issues regarding separate property, this section shall contain a sentence stating "No separate property issues."

K. **Settlement**. If any of the foregoing matters have been settled, the terms of the settlement shall be set forth under the appropriate headings.

L. **Points and Authorities**. For each disputed issue regarding a question of law, the Mandatory Settlement Conference Statement shall, where appropriate, include points and authorities as follows:

1. A statement of the issue;

2. A brief statement of facts;

3. A brief legal argument and supporting authority; and

4. A conclusion. **(Effective July 1, 2007; Rule 5.7.8 renumbered effective January 1, 2006; adopted as Rule 36.9 effective January 1, 2000)**

5.7.9 Court Settlement Conference Statement Documents

Copies of the following documents shall be attached to the Settlement Conference Statement, unless specifically referenced in the statement, if an unresolved issue requires their production:

A. All real property appraisals and pension plan, 401(k), and other deferred compensation evaluations.

B. Bank, credit union, savings account balances, and statements of balances of other liquid accounts, as of date of separation and relevant dates thereafter.

C. Promissory notes, deeds, and other documents of title or major debt, bills from creditors and negotiated bank checks.

D. Statement of earnings of either spouse whenever child or spousal support or attorney fees are at issue.

E. An itemization of all furniture, furnishings, appliances, utensils, and all other personal property, with the party's best estimate of value of each item, unless the parties previously have agreed to some reasonable division of these items, or unless an appraisal of these items is enclosed.

F. A statement from the carrier of the cash value of a whole life insurance policy.

G. All parties shall bring to court all documents they claim were served on the other party, including, but not limited to, Preliminary and/or Final Declarations of Disclosure, appraisals, financial documents, and any other documents relative to settlement. **(Rule 5.7.9 renumbered effective January 1, 2006; adopted as Rule 36.10 effective July 1, 1992)**

5.7.10 Time and Manner of Delivery of Statements

A. Each party shall insure that a copy of the Court Settlement Conference Statement is served at least five (5) court days prior to the court settlement conference.

B. A proof of service shall be attached to the Court Settlement Conference Statement evidencing delivery to the opposing party.

C. The DCSS is not required to prepare and deliver Court Settlement Conference Statements. **(Rule 5.7.10 renumbered effective January 1, 2006; adopted as Rule 36.11 effective July 1, 1998)**

5.7.11 Subsequent Settlement Conferences

If, after an initial court settlement conference, and the court settlement conference is continued to another date, if will NOT be necessary to submit another Court Settlement Conference Statement, provided there has been no change of circumstances since the submission of the last Court Settlement Conference Statement, or unless ordered by the court. **(Rule 5.7.11 renumbered effective January 1, 2006; adopted as Rule 36.12 effective July 1, 1999)**

5.7.12 Settlement Resulting in Stipulations

A. Unless otherwise agreed in open court by the parties, it shall be the responsibility of the petitioner to state the settlement, obtain the dissolution of the marriage, and prepare the Judgment or Order on Reserved Issues, and within ten (10) days from the date of the settlement submit it to opposing party for approval. The procedure set forth in Rule 5.2.17 shall be applicable regarding the approval by opposing attorney and signature of the court.

B. All in-court stipulations shall be preceded by appropriate waivers of notice of time and place of trial and a statement of decision. They may be preceded by waivers of right to appear and right to move for a new trial. The waivers shall be set forth in the Judgment or Order on Reserved Issues. **(Rule 5.7.12 renumbered effective January 1, 2006; adopted as Rule 36.14 effective July 1, 1994)**

(Rule 5.7 renumbered effective January 1, 2006; adopted as Rule 36 effective July 1, 1992)

RULE 5.8 ADOPTIONS

5.8.1 Stepparent/Domestic Partner Adoptions under Family Code Sections 8500 et seq., 8600 et seq., and 9000 et seq.

A. A stepparent desiring to adopt a child of the stepparent's spouse may for that purpose file a petition in the county in which the petitioner resides. A domestic partner, as defined in Family Code § 297, desiring to adopt a child of his or her domestic partner may for that purpose file a petition in the county in which the petitioner resides. If the other parent does not consent there may be an additional action needed.

B. The petitioner or their attorney is responsible for filing the Adoption Request, Adoption Order and Adoption Agreement for each child with the Family Law Clerk's Office. Once the Adoption Request for each child has been filed, the Court Examiner must immediately send a conformed copy to Family Court Services.

C. Family Court Services will notify the petitioner or their attorney by mail to set up an appointment in order to conduct an investigation.

D. The following documents must be forwarded to Family Court Services no later than fifteen (15) calendar days from the receipt of notification by Family Court Services:

1. Birth Certificate of the Child (Certified Copy);

2. Birth Certificate of Natural Parent retaining custody of the child;

3. Birth Certificate of the adopting party;

4. Marriage Certificate of Natural Parents (Certified Copy) (if applicable);

5. Marriage Certificate of Natural Parent and Stepparent (Certified Copy) (if applicable);

6. Declaration of Domestic Partnership (Filed Copy) (if applicable);

7. Final Judgment of Dissolution of Natural Parents (Filed Copy) (if applicable);

8. Final Judgment of Dissolution of Domestic Partnership of Natural Parents (Filed Copy) (if applicable);

9. Final Judgment of Dissolution of Marriage of the Adopting Parent (Filed Copy) (if applicable);

10. Final Judgment of Dissolution of Domestic Partnership of Adopting Parent (Filed Copy) (if applicable);

11. Death Certificate of Natural Parent (Certified Copy) (if applicable); and

12. Social History Data Sheet

E. In the event that Family Court Services is not provided with the requested documents, no appointment will be scheduled and the court will be notified that Family Court Services cannot proceed with the Stepparent/Domestic Partner adoption.

F. Once the investigation has been completed, a copy of the report, whether favorable or unfavorable, shall be given by Family Court Services to the petitioner's attorney in the proceeding, if the petitioner has an attorney of record, or the petitioner. The original report is submitted to the Family Law Clerk's Office for filing.

G. The court may not set a hearing until after the original report or findings have been filed. Once the court has received the report or findings and all notices have

been completed by the petitioner or their attorney, the adoption can be calendared. The petitioner or their attorney must call the Family Law Clerk's Office to schedule the hearing.

H. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Adoption proceeding.** **(Effective July 1, 2007; Rule 5.8.1 renumbered effective January 1, 2006; adopted as Rule 37.1 effective July 1, 1992)**

5.8.2 Independent Adoptions under Family Code Sections 8500 et seq., 8600 et seq., and 8800 et seq.

A. The petitioner(s) or their attorney is responsible for filing Adoption Request, Adoption Expenses, Adoption Order and Adoption Agreement for each child with the Family Law Clerk's Office. If either parent does not consent there may be an additional action needed. Once the request for each child has been filed, it is necessary for the petitioner(s) or their attorney to immediately send a conformed copy to:

California Department of Social Services
Fresno Adoptions District Office
770 East Shaw Avenue, Suite # 109
Fresno, CA 93710-7708

B. The State Department of Social Services is responsible for conducting an investigation and preparing a report and recommendation to the court. Once the investigation has been completed, a copy of the report, whether favorable or unfavorable, shall be given by the State Department of Social Services to the petitioner's attorney in the proceedings, if the petitioner(s) has an attorney of record, or the petitioner(s). The original report is submitted to the Family Law Clerk's Office for filing.

C. The court may not set a hearing until after the original report and recommendation have been filed. Once the court has received the report and the petitioner(s) or their attorney has completed all notices, the adoption can be calendared. Petitioner(s) or their attorney must call the Family Law Clerk's Office to schedule the hearing.

D. If the petitioner(s) desire to withdraw the petition or dismiss the proceeding or the State Department of Social Services recommends that the petition be denied, the Family Law Clerk's Office upon receipt of the report from the State Department of Social Services, shall immediately refer it to the court for review. The Court Clerk shall immediately notify the department in Sacramento of the action. Upon receipt of the report or dismissal, the court shall set a date for hearing of the petition and shall give reasonable notice of hearing to the State Department of Social Services, the petitioner's attorney in the proceeding, if the petitioner(s) has an attorney of record, or the petitioner(s) and if necessary, the birth parents, by certified mail, return receipt requested, to the address of each as shown in the proceedings.

E. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Adoption Proceeding.** **(Effective July 1, 2007; Rule 5.8.2 renumbered effective January 1, 2006; adopted as Rule 37.2 effective July 1, 1992)**

5.8.3 Agency Adoptions under Family Code Sections 8500 et seq., 8600 et seq. and 8700 et seq.

A. The petitioner(s), agency representative or their attorney is responsible for filing the Adoption Request, Adoption Expenses, Joinder, Adoption Order and Adoption Agreement for each child with the Family Law Clerk's Office. Petitioner(s) must cooperate with the licensed adoption agency. If either parent does not consent there may be an additional action needed.

B. When the report or findings are submitted to the court by a licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner's attorney in the proceeding, if the petitioner(s) have an attorney of record, or the petitioner(s) by the licensed adoption agency. The original report or findings are submitted to the Family Law Clerk's Office for filing.

C. Once the court has received the report and the petitioner(s), agency representative or their attorney has completed all notices, the adoption can be calendared. The petitioner(s), agency representative or their attorney must call the Family Law Clerk's Office to schedule the hearing.

D. If the petitioner(s) desires to withdraw the petition or dismiss the proceeding or the State Department of Social Services or licensed adoption agency recommends that the petition be denied, the Family Law Clerk's Office upon receipt of the report of the State Department of Social Services or licensed adoption agency shall immediate refer it to the Court for review. The Court Clerk shall immediately notify the department in Sacramento of the action. Upon receipt of the report or dismissal, the court shall set a date for hearing of the petition and shall give reasonable notice of hearing to the State Department of Social Services, licensed adoption agency, the petitioner's attorney in the proceeding, if the petitioner(s) has an attorney of record, or the petitioner(s) and if necessary, the birth parents, by certified mail, return receipt requested, to the address of each as shown in the proceedings.

E. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Adoption proceeding.** **(Effective July 1, 2007; Rule 5.8.3 renumbered effective January 1, 2006; adopted as Rule 37.3 effective July 1, 1999)**

5.8.4 Intercounty Adoptions Finalized under Family Code Sections 8500 et seq., 8600 et seq. and 8900 et seq.

A. Each resident of the State of California, County of Fresno who adopts a child through intercounty adoption that is finalized in a foreign country may readopt the child in this county.

B. The petitioner(s), agency representative or their attorney is responsible for filing the Adoption Request, Adoption Expenses, Joinder, Adoption Order and Adoption Agreement for each child with the Family Law Clerk's Office. The petitioner(s) must cooperate with the agency. If either parent does not consent there may be an additional action needed.

C. When the report or findings are submitted to the court by a licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner's attorney in the proceeding, if the petitioner(s) have an attorney of record, or the petitioner(s) by the licensed adoption agency. The original report or findings are submitted to the Family Law Clerk's Office for filing.

D. The court may not set a hearing until after the original report or findings have been filed. Once the court has received the report or findings and all notices have been completed by the petitioner(s) or their attorney, the adoption can be calendared. Petitioner(s), agency representative or their attorney must call the Family Law Clerk's Office to schedule the hearing.

E. If the petitioner(s) desires to withdraw the petition or dismiss the proceeding or the State Department of Social Services or licensed adoption agency recommends that the petition be denied, the Family Law Clerk's Office upon receipt of the report of the State Department of Social Services or licensed adoption agency shall immediately refer it to the court for review. The Court Clerk shall immediately notify the department in Sacramento of the action. Upon receipt of the report or dismissal, the court shall set a date for hearing of the petition and shall give reasonable notice of hearing to the State Department of Social Services, licensed adoption agency, the petitioner's attorney in the proceeding, if the petitioner(s) has an attorney of record, or the petitioner(s) and if necessary, the birth parents, by certified mail, return receipt requested, to the address of each as shown in the proceedings.

F. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Adoption proceeding.** **(Effective July 1, 2007, New)**

5.8.5 Adoptions of Adults under Family Code Sections 8500 et seq., 8600 et seq. and 9300 et seq.

A. An adult or married minor may be adopted by another adult, including a stepparent.

B. The petitioner(s) or their attorney is responsible for filing with the Family Law Clerk's Office for each adoption the Petition for Approval of Adoption Agreement and if applicable, the consent of the spouse.

C. A married person, who is not lawfully separated from the person's spouse, may not adopt an adult without the consent of the spouse, provided the spouse is capable of giving that consent.

D. A married person who is not lawfully separated from the person's spouse, may not be adopted without the consent of the spouse, provided the spouse is capable of giving that consent.

E. When the Petition for Approval of Adoption Agreement is filed, the Court Examiner shall set the matter for hearing. The court may require notice of the time and place of the hearing to be served on any interested person and any interested person may appear and object to the proposed adoption. **(Effective July 1, 2007, New)**

(Rule 5.8 renumbered effective January 1, 2006; adopted as Rule 37 effective July 1, 1992)

RULE 5.9 PARENTAL RIGHTS

5.9.1 Filing of the Petition to Terminate Parental Rights of the Father under Family Code Section 7600 et seq.

A. The petitioner(s), agency representative or their attorney is responsible for filing for each parent with the Family Law Clerk's Office the petition to terminate parental rights of the father and if applicable: a notice of proceeding to be issued by the Court Examiner or an Order Dispensing with Notice. Once the Petition for each parent has been filed, the Court Examiner must immediately send a conformed copy to Family Court Services with the exception of the filing from a licensed adoption agency.

B. Family Court Services will notify the petitioner(s) or their attorney by mail to set up an appointment in order to conduct an investigation.

C. The following documents must be forwarded to Family Court Services no later than fifteen (15) calendar days from the receipt of notification by Family Court Services:

1. Birth Certificate of the Child (Certified Copy);

2. Birth Certificate of Natural Parent retaining custody of the child;

3. Birth Certificate of the adopting party;

4. Marriage Certificate of Natural Parents (Certified Copy) (if applicable);

5. Marriage Certificate of Natural Parent and Stepparent (Certified Copy) (if applicable);

6. Declaration of Domestic Partnership (Filed Copy) (if applicable);

7. Final Judgment of Dissolution of Natural Parents (Filed Copy) (if applicable);

8. Final Judgment of Dissolution of Domestic Partnership of Natural Parents (Filed Copy) (if applicable);

9. Final Judgment of Dissolution of Marriage of the Adopting Parent (Filed Copy) (if applicable);

10. Final Judgment of Dissolution of Domestic Partnership of Adopting Parent (Filed Copy) (if applicable);

11. Death Certificate of Natural Parent (Certified Copy) (if applicable); and

12. Social History Data Sheet

D. In the event that Family Court Services is not provided with the requested documents, no appointment will be scheduled and the court will be notified that Family Court Services cannot proceed with the Investigation Report.

E. Once the investigation has been completed, a copy of the report, whether favorable or unfavorable, shall be given to the petitioner's attorney in the proceeding. If the petitioner(s) has an attorney of record, or the petitioner(s) by Family Court Services. The original report is submitted to the Family Law Clerk's Office for filing.

F. In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Termination proceeding. **(Effective July 1, 2007; adopted January 1, 2006)**

(Rule 5.9, New effective January 1, 2006)

5.9.2 Filing of the Petition for Declaration of Freedom from Parental Custody and Control under Family Code Section 7800 et seq.

A. A proceeding may be brought under this part for that purpose of having a minor child declared free from the custody and control of either or both parents.

B. The petitioner(s), agency representative or their attorney is responsible for filing for each parent with the Family Law Clerk's Office the petition for Declaration of Freedom from Parental Custody and Control and a Citation to be issued by the Court Examiner. Once the Petition for each parent has been filed, the Court Examiner must immediately send a conformed copy to Family Court Services with the exception of the filing from a licensed adoption agency.

C. Family Court Services will notify the petitioner(s) or their attorney by mail to set up an appointment in order to conduct an investigation.

D. The following documents must be forwarded to Family Court Services no later than fifteen (15) calendar days from the receipt of notification by Family Court Services:

1. Birth Certificate of the Child (Certified Copy);

2. Birth Certificate of Natural Parent retaining custody of the child;

3. Birth Certificate of the adopting party;

4. Marriage Certificate of Natural Parents (Certified Copy) (if applicable);

5. Marriage Certificate of Natural Parent and Stepparent (Certified Copy) (if applicable);

6. Declaration of Domestic Partnership (Filed Copy) (if applicable);

7. Final Judgment of Dissolution of Natural Parents (Filed Copy) (if applicable);

8. Final Judgment of Dissolution of Domestic Partnership of Natural Parents (Filed Copy) (if applicable);

9. Final Judgment of Dissolution of Marriage of the Adopting Parent (Filed Copy) (if applicable);

10. Final Judgment of Dissolution of Domestic Partnership of Adopting Parent (Filed Copy) (if applicable);

11. Death Certificate of Natural Parent (Certified Copy) (if applicable);

12. Social History Data Sheet

E. In the event that Family Court Services is not provided with the requested documents, no appointment will be scheduled and the court will be notified that Family Court Services cannot proceed with the Investigation Report.

F. Once the investigation has been completed, a copy of the report, whether favorable or unfavorable, shall be given by Family Court Services to the petitioner's attorney in the proceeding, if the petitioner(s) has an attorney of record, or the petitioner(s). The original report is submitted to the Family Law Clerk's Office for filing.

G. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Petition for Declaration of Freedom from Parental Custody and Control proceeding.** **(Effective July 1, 2007, New)**

(Rule 5.9 Adopted January 1, 2006)

(Chapter 5 amended effective January 1, 2006; adopted as V effective July 1, 1992)

RULE 5.10 ARBITRATION

The court may require the parties to submit to arbitration, when applicable.

The provisions set forth in the California Rules of Court shall be followed except:

1. When no request for compliance is filed within ten (10) calendar days after any case is ordered to arbitration, the provisions thereof are deemed waived and the administrator shall select an arbitrator at random from the panel of arbitrators. The arbitrator may appoint a specific arbitrator upon stipulation of all parties at any time prior to the selection of an arbitrator.

2. With the consent of the arbitrator, the parties may stipulate to one (1) continuance, not to exceed thirty (30) calendar days. Any further requests for continuance shall be made by motion before the Judicial Officer. **(Rule 5.10 renumbered effective January 1, 2006; adopted as Rule 38 effective July 1, 1992)**

RULE 5.11 THE FAMILY LAW FACILITATOR

A. Pursuant to Family Code § 10000 et seq., the Fresno County Superior Court shall maintain an office of the family law facilitator. Services provided by the family law facilitator shall include, but are not limited to those set out in Family Code §10004.

B. Provided they have adequate staffing, time, funding, and available resources, the Family Law Facilitator may provide and perform any additional duties as directed by the Presiding Judge of the Family Law Department pursuant to Family Code § 10005. **(Rule 5.11 renumbered effective January 1, 2006; adopted as Rule 39 effective July 1, 1998)**

(Chapter 5 amended effective January 1, 2006; adopted as Rule V effective July 1, 1992)

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CHAPTER 6. JUVENILE RULES

RULE 6.1 GENERAL PROVISIONS

6.1.1 Authority

These Juvenile Rules apply to matters heard in Juvenile Court, with the exception of juvenile traffic hearings and juvenile traffic hearing appeals. **(Rule 6.1.1 renumbered effective January 1, 2006; adopted as Rule 50.1 effective January 1, 1999)**

6.1.2 Presiding Judge of the Juvenile Court

There shall be one Presiding Judge of the Juvenile Court. The Presiding Judge of the Juvenile Court shall be selected by the Presiding Judge of the court. To the extent possible the Presiding Judge of the Juvenile Court shall remain in that position for at least three years. **(Rule 6.1.2 renumbered effective January 1, 2006; adopted as Rule 50.2 effective January 1, 1999)**

6.1.3 Juvenile Court Committees

The Presiding Judge of the Juvenile Court may authorize and establish such informal committees related to Juvenile Court work and activities as the Presiding Judge of the Juvenile Court deems appropriate. Membership on such committees shall be as determined by the Presiding Judge of the Juvenile Court. **(Rule 6.1.3 renumbered effective January 1, 2006; adopted as Rule 50.3 effective January 1, 1999)**

6.1.4 Assignment of Juvenile Court Cases

It is the policy of the Juvenile Court to have all matters heard by a judicial officer assigned to the Juvenile Court. **(Rule 6.1.4 renumbered effective January 1, 2006; adopted as Rule 50.4 effective January 1, 1999)**

6.1.5 Master Calendar Referrals (Long Cause Cases)

Only the Presiding Judge of the Juvenile Court shall assign any case to the Superior Court Master Calendar for trial. **(Rule 6.1.5 renumbered effective January 1, 2006; adopted as Rule 50.5 effective January 1, 1999)**

6.1.6 Peremptory Challenges

Any challenge of a judicial officer hearing dependency matters in Juvenile Court pursuant to Code of Civil Procedure § 170, et seq. shall be reported to the Presiding Judge of the Juvenile Court. The Presiding Judge of the Juvenile Court shall take whatever legal action is appropriate, including reassignment to another department if necessary. **(Rule 6.1.6 renumbered effective January 1, 2006; adopted as Rule 50.6 effective January 1, 1999)**

6.1.7 Declarations of Conflict and Appointment of New Counsel

A. Whenever any counsel for any party in a dependency proceeding determines that a conflict of interest exists which interferes with that attorney's ability to represent that client, the attorney shall immediately file such a declaration with the court. All discovery in the possession of the attorney should be submitted to the court at the time the declaration is filed.

B. The court shall appoint new counsel upon receipt of the declaration, and the Clerk of the court shall forward discovery to that attorney.

C. The Clerk shall provide notice of appointment of new counsel to all other parties. **(Rule 6.1.7 renumbered effective January 1, 2006; adopted as Rule 50.7 effective July 1, 1999)**

6.1.8 Abbreviations

Abbreviations used in these Juvenile Law Rules are defined in Appendix D-1. **(Effective January 1, 2007)**

(Rule 6.1 renumbered effective January 1, 2006; adopted as Rule 50 effective July 1, 1992)

RULE 6.2 PARTIES

6.2.1 Attendance at Hearing

Unless excused by the court, each party and attorney shall attend each scheduled Juvenile Court hearing. **(Rule 6.2.1 renumbered effective January 1, 2006; adopted as Rule 51.1 effective January 1, 1999)**

6.2.2 Duties of Counsel for the Minor

Anyone who appears as attorney for a minor in a dependency proceeding shall comply with the provisions of Welfare & Institutions Code § 317(e), including interviewing each child who is four (4) years old or older. **(Effective January 1, 2007, Rule 6.2.2 renumbered effective January 1, 2006; adopted as Rule 51.2 *effective January 1, 1999*)**

6.2.3 Access to Minors Petitioned Pursuant to Welfare & Institutions Code § 300

Except for Department of Children and Family Services (DCFS) personnel:

A. No party or attorney in a dependency proceeding shall interview the minor about the events relating to the allegations in the petition(s) on file without permission of the minor's attorney or court order.

B. No party or attorney, including minor's attorney, in a dependency proceeding shall cause the minor to undergo a physical, medical or mental health examination or evaluation without court approval. **(Effective January 1, 2007, Rule 6.2.3 renumbered effective January 1, 2006; adopted as Rule 51.3 effective January 1, 1996)**

6.2.4 Interviewing Minors Who are Alleged Victims of Child Abuse or Neglect

All attorneys representing parties in a dependency case in which child abuse or neglect has been alleged and other participants in the case, including a child advocate, shall minimize the number of interviews given by the child relating to the events surrounding the alleged abuse or neglect. Those participants requiring information about the alleged incident shall first review any interviews taken or reports made by the investigating officer(s). **(Effective January 1, 2007, Rule 6.2.4 renumbered effective January 1, 2006; adopted as Rule 51.4 effective January 1, 1996)**

6.2.5 Presence of Minor in Court

All minors are entitled to attend court hearings. Every minor ten (10) years old or older shall be told of his or her right to attend court hearings and all minors ten (10) years old or older shall be given notice by DCFS.

All minors ten (10) years old or older shall attend court hearings unless excused for one of the listed reasons:

A. The minor's attorney waives the minor's appearance;

B. The minor chooses not to attend;

C. The minor is excused by the court; or

D. The minor is disabled, physically ill, or hospitalized.

No minor shall be brought to court solely for the minor to confer with his or her attorney or for a visit with a parent, relative or friend. **(Effective January 1, 2007, Rule 6.2.5 renumbered effective January 1, 2006; adopted as Rule 51.5 effective January 1, 1999)**

6.2.6 Guardian Ad Litem for Minors

For purposes of the federal Child Abuse Prevention and Treatment Act and Welfare & Institutions Code § 326.5, the minor's attorney shall be deemed to be the minor's guardian ad litem (GAL) unless the court orders otherwise. **(Effective January 1, 2007, Rule 6.2.6 renumbered effective January 1, 2006; adopted as Rule 51.6 effective January 1, 1999)**

6.2.7 Guardian Ad Litem for Parents

The court shall appoint any person that the court deems qualified as a GAL to represent any incompetent parent or guardian whose child is before the Juvenile Court pursuant to a petition under Welfare & Institutions Code § 300. The determination of incompetency may be made by the court at any time in the proceeding based upon evidence received from any interested party. **(Effective January 1, 2007, Rule 6.2.7 renumbered effective January 1, 2006; adopted as Rule 51.7 effective January 1, 1996)**

6.2.8 Notice to Guardian Ad Litem, Access to Records, Right to Appear

In all proceedings, the GAL shall be given the same notice as any party, have the same access to all records relating to the case as would any party, and have the right to appear at all hearings. **(Effective January 1, 2007, Rule 6.2.8 renumbered effective January 1, 2006; adopted as Rule 51.8 effective January 1, 1996)**

6.2.9 Care Providers

A minor's care provider shall be allowed to be present at the hearing and address the court. **(Rule 6.2.9 renumbered effective January 1, 2006; adopted as Rule 51.9 effective January 1, 1996)**

6.2.10 De Facto Parents

Upon a sufficient showing the court may recognize the minor's present or previous custodians as de facto parents and grant standing to participate as parties in dispositional hearings and any hearings thereafter at which the status of the dependent child is at issue. The person seeking de facto parent status shall have the rights outlined in California Rules of Court, Rule 5.534(e). **(Effective July 1, 2007, Rule 6.2.10 renumbered effective January 1, 2006; adopted as Rule 51.10 effective January 1, 1996)**

6.2.11 Relatives

Upon a sufficient showing, the court may permit relatives of the child to be present at the hearing and address the court. The court shall hear from all parties before granting such permission. **(Rule 6.2.11 renumbered effective January 1, 2006; adopted as Rule 51.11 effective January 1, 1996)**

6.2.12 Court-Appointed Counsel Duties

All court-appointed counsel shall comply with their professional duties as required by statute, regulation, and state and local rules of court. **(Rule 6.2.12 renumbered effective January 1, 2006; adopted as Rule 51.12 effective January 1, 1996)**

6.2.13 Financial Responsibility When Court Appoints Counsel

Pursuant to Welfare & Institutions Code § 903 and California Rules of Court, Rule 5.534(g), whenever a party (other than the minor) appears in dependency proceedings and the court appoints counsel for the party, or the party retains counsel, the party shall complete a Notice of Financial Responsibility form and comply with the following procedures. These procedures will be followed in ordering and collecting costs for court-appointed counsel, Juvenile Hall support, C.K. Wakefield support, and/or probation supervision from each parent or responsible party ("parent"). This rule applies to proceedings brought under Welfare & Institutions Code §§ 300, 601, and 602.

A. Upon checking in for his or her initial court appearance, each parent will be given a copy of the Notice of Financial Responsibility form (FCAC #340) and the Court Order to Report for Financial Evaluation form (FCAC #339). This will generally allow each parent to read the notice and to fill in the appropriate areas of the court Order to Report form prior to the parent's actual appearance in the Juvenile Court case.

If counsel has been appointed or anticipates being appointed to represent the parent, the attorney should ask the parent whether he or she has received these forms, and provide a copy of them if needed.

B. Each parent who could be liable for costs or support and who is present in court shall complete the information concerning himself or herself on the Court Order to Report form, sign the form, and submit it to the court at the time of the initial court appearance. The court will review and sign the order at the time of the initial court hearing. The parent will be given a copy of the order. A copy will be placed in the court's file and a copy will go to the Revenue and Reimbursement Division (RRD). Absent other consideration by the court, the court will order the responsible person to appear upon the financial officer's request or at a scheduled appointment. A separate Court Order to Report form shall be completed for each parent who may have financial liability under Welfare & Institutions Code § 903 et seq.

C. When the parent contacts RRD, RRD will assist the parent in completing a Financial Declaration form (FCAC #60). Based on the financial information provided to RRD, RRD will work with the parent and attempt to obtain a signed Agreement and Waiver of Hearing form (FCAC #98). Thereafter, RRD will complete its Report and Recommendation form (FCAC #272) and submit it to the court for its review. If a parent has requested a hearing, the court shall set the matter for hearing. Notice of the hearing shall be sent by RRD to each requesting parent. Whenever the court orders the parent to pay RRD monies pursuant to Welfare & Institutions Code § 903 et seq., RRD will thereafter have responsibility for collection of the monies consistent with the court's order. Monies ordered to be paid pursuant to this procedure shall not be made a condition of any court ordered probation or case disposition. **(Effective July 1, 2007, Rule 6.2.13 renumbered effective January 1, 2006; adopted as Rule 51.13 effective January 1, 1999)**

6.2.14 The Child Advocate Program

The Superior Court may appoint child advocates to represent the interests of dependent children. In order to qualify for appointment, the child advocate must be trained by and function under the auspices of a Court Appointed Special Advocate Program (CASA), formed and operating under the guidelines set forth in California Rules of Court, Rule 5.655 and Welfare & Institutions Code § 356.5.

The CASA program shall report regularly to the Presiding Judge of the Juvenile Dependency Court with evidence that it is operating under the guidelines established by the National Court Appointed Special Advocate Association and the California State Guidelines for Child Advocates. **(Effective July 1, 2007, Rule 6.2.14 renumbered effective January 1, 2006; adopted as Rule 51.14 effective January 1, 1996)**

6.2.15 Child Advocates

A. **Advocate's Functions**. Advocates serve at the pleasure of the court having jurisdiction over the proceeding in which the advocate has been appointed. In general, an advocate's functions are as follows:

1. To support the child throughout the court proceedings;

2. To establish a relationship with the child to better understand his or her particular needs and desires;

3. To communicate the child's needs and desires to the court in written reports and recommendations;

4. To identify and explore potential resources which will facilitate early family reunification or alternative permanency planning;

5. To provide continuous attention to the child's situation to ensure that the court's plans for the child are being implemented;

6. To the fullest extent possible, to communicate and coordinate efforts with the case manager/social worker;

7. To the fullest extent possible, to communicate and coordinate efforts with the child's attorneys; and

8. To investigate the interests of the child in other judicial or administrative proceedings outside Juvenile Court; report to the Juvenile Court concerning same; and, with the approval of the court, offer his or her services on behalf of the child to such other courts or tribunals.

B. **Sworn Officer of the Court**. An advocate is an officer of the court and is bound by these rules.

Each advocate shall be sworn in by a Superior Court Judge before beginning his or her duties, and shall subscribe to the written oath set forth in the Appendix D2.

C. **Specific Duties**. The court shall, in its initial order of appointment, and thereafter in any subsequent order, specifically delineate the advocate's duties in each case, which may include independent investigation of the circumstances of the case, interviewing and observing the child and other appropriate individuals, reviewing appropriate records and reports, consideration of visitation rights for the child's grandparents and other relatives, and reporting back directly to the court as indicated. If no specific duties are outlined by court order, the advocate shall discharge his or her obligation to the child and the court in accordance with the general duties set forth in (A) above. **(Rule 6.2.15 renumbered effective January 1, 2006; adopted as Rule 51.15 effective January 1, 1999)**

6.2.16 Release of Information to Advocate

A. **Court Authorization**. To accomplish the appointment of an advocate, the Judge making the appointment shall sign an order granting the advocate the authority to

review specific relevant documents and interview parties involved in the case, as well as other persons having significant information relating to the child, to the same extent as any other officer appointed to investigate proceedings on behalf of the court.

B. Access to Records. An advocate shall have the same legal right to records relating to the child he or she is appointed to represent as any case manager/social worker with regard to records pertaining to the child held by any agency, school, organization, division or department of the State, physician, surgeon, nurse, other health care provider, psychologist, psychiatrist, mental health provider or law enforcement agency. The advocate shall present his or her identification as a court-appointed advocate to any such record holder in support of his or her request for access to specific records. No consent from the parent or guardian is necessary for the advocate to have access to any records relating to the child.

C. **Report of Child Abuse**. An advocate is a mandated child abuse reporter with respect to the case to which the advocate is appointed.

D. **Communication With Others**. DCFS, the case manager, the child's attorney, the attorneys for parents, relatives, foster parents, any CASA advocate, and any therapist for the child shall engage in ongoing regular communication concerning the child's best interests, current status, and significant case developments. **(Effective January 1, 2007, Rule 6.2.16 renumbered effective January 1, 2006; adopted as Rule 51.16 effective January 1, 1996)**

6.2.17 Advocate's Right to Timely Notice

In any motion concerning the child for whom the advocate has been appointed, the moving party shall provide the advocate timely notice. **(Rule 6.2.17 renumbered effective January 1, 2006; adopted as Rule 51.17 effective January 1, 1996)**

6.2.18 Calendar Priority for Advocates

In light of the fact that advocates are rendering a voluntary service to children and the court, matters on which they appear should be granted priority on the court's calendar, whenever possible. **(Rule 6.2.18 renumbered effective January 1, 2006; adopted as Rule 51.18 effective January 1, 1999)**

6.2.19 Advocate's Visitation Throughout Dependency

An advocate shall visit the child regularly until the child is secure in a permanent placement. Thereafter, the advocate shall monitor the case as appropriate until dependency is dismissed or the advocate is relieved from appointment. **(Rule 6.2.19 renumbered effective January 1, 2006; adopted as Rule 51.19 effective January 1, 1996)**

6.2.20 Family Law Advocacy

Should the Juvenile Court dismiss dependency and create a family law order pursuant to Welfare & Institutions Code § 362.4, the advocate's appointment may be continued in the family law proceeding, in which case the Juvenile Court order shall set

forth the nature, extent and duration of the advocate's duties in the family law proceeding. **(Rule 6.2.20 renumbered effective January 1, 2006; adopted as Rule 51.20 effective January 1, 1996)**

6.2.21 Advocate's Right to Appear

An advocate shall have the right to be present and be heard at all court hearings, and shall not be subject to exclusion by virtue of the fact that the advocate may be called to testify at some point in the proceedings. An advocate shall not be deemed to be a "party" (California Rules of Court, Rule 5.530(b)(6)); however, the court, in its discretion, shall have the authority to grant the advocate amicus curiae status, which includes the right to appear with counsel. **(Effective July 1, 2007, Rule 6.2.21 renumbered effective January 1, 2006; adopted as Rule 51.21 effective January 1, 1996)**

6.2.22 Appearance by Consular Representative

In cases where a parent or minor is a citizen of a foreign nation, the Consul or representative of the Consul of that nation shall have the right to appear and participate in the court proceedings to the extent such is provided for by international agreement to which the United States is a signatory. **(Effective January 1, 2007, Rule 6.2.22 renumbered effective January 1, 2006; adopted as Rule 51.22 effective January 1, 1996)**

(Rule 6.2 renumbered effective January 1, 2006; adopted as Rule 51 effective July 1, 1992)

RULE 6.3 COURT PROCEEDINGS

6.3.1 Determination of Paternity

The issue of the paternity of a minor may be determined in a Juvenile Court proceeding. **(Rule 6.3.1 renumbered effective January 1, 2006; adopted as Rule 52.1 effective January 1, 1996)**

6.3.2 Paternity - Necessary Court Measures

If a person claims to be the natural/biological father of a minor who is the **subject** of Juvenile Court proceedings, the court may take such measures as are necessary to make a paternity finding and judgment. **(Effective January 1, 2007, Rule 6.3.2 renumbered effective January 1, 2006; adopted as Rule 52.2 effective January 1, 1996)**

6.3.3 Paternity - Right To Counsel / Legal Responsibilities

In any paternity proceeding arising under this rule the court shall inform the mother and the person claiming to be father of their right to be separately **represented** by counsel on the issue of paternity. The court shall advise the person claiming to be father of his legal responsibilities should he be found to be the natural father of the minor, including the obligation to pay child support and the possibility he may be incarcerated if he willfully fails to pay child support after being legally ordered to do so. **(Rule 6.3.3 renumbered effective January 1, 2006; adopted as Rule 52.3 effective January 1, 1996)**

6.3.4 Paternity - Evidence or Testimony

The court shall permit such evidence to be taken as necessary to determine the paternity of the minor. Testimony from the mother and the person claiming to be the natural father may be sufficient to make a paternity finding and judgment. If the mother or the person claiming to be father is absent from the court proceeding, evidence in addition to testimony from those in attendance will normally be necessary to enable the court to make a paternity finding. **(Effective January 1, 2007, Rule 6.3.4 renumbered effective January 1, 2006; adopted as Rule 52.4 effective January 1, 1996)**

6.3.5 Paternity - Scientific Testing

The court may order blood or other scientific tests if it believes such tests will assist in making a paternity finding. The court shall determine which party or parties shall pay for any such test. **(Rule 6.3.5 renumbered effective January 1, 2006; adopted as Rule 52.5 effective January 1, 1996)**

6.3.6 Paternity – Finding and Judgment

Any paternity finding and judgment shall be noted in the Clerk's minutes and appropriate documentation shall be provided to the parties, their counsel, and the local child support agency. **(Effective January 1, 2007, Rule 6.3.6 renumbered effective January 1, 2006; adopted as Rule 52.6 effective January 1, 1996)**

6.3.7 Timely Disclosure of Informal Discovery

Pre-hearing discovery shall be conducted informally. Except as protected by privilege, all relevant material shall be disclosed in a timely fashion to all parties of the litigation. **(Rule 6.3.7 renumbered effective January 1, 2006; adopted as Rule 52.7 effective January 1, 1996)**

6.3.8 Formal Discovery

A. **Formal Discovery.** Only after all informal means have been exhausted may a party petition the court for discovery. Any noticed motion shall state the relevancy and materiality of the information sought and the reasons why informal discovery was not adequate to secure that information. The motion shall be served on all parties and the clerk of the department hearing the motion at least five (5) court days before the hearing date.

Any responsive papers shall be filed and served on all parties and the clerk of the department hearing the motion two (2) court days prior to the hearing.

B. **Civil Discovery.** In order to coordinate the logistics of discovery in dependency cases, there shall be no depositions, interrogatories, subpoenas of juvenile records or other similar types of civil discovery without approval of a judge of the Juvenile Court upon noticed motion. For non-dependency cases see Rule 6.7.1.

C. **Case Records and Reports (California Rules of Court, Rule 5.546).** In contested proceedings, the social worker's narratives and other relevant case records

shall be made available to all counsel at least ten (10) calendar days before the hearing and any updated records two (2) calendar days before the hearing. In all other cases, such documents shall be made available at least two (2) calendar days prior to the hearing.

Upon timely request, parents and guardians shall disclose to DCFS such non-privileged material and information within the parent's or guardian's control which is relevant. **(Effective July 1, 2007, Rule 6.3.8 renumbered effective January 1, 2006; adopted as Rule 52.8 effective January 1, 1999)**

6.3.9 Presentation of Evidence

A. Social study reports prepared by DCFS shall be made available to all parties before the hearing in accordance with the following time limitations unless otherwise ordered by the court::

1. Jurisdictional and/or Dispositional reports are due at least forty-eight (48) hours before the hearing;

2. Six, Twelve and Eighteen Month Status Reviews and Section 366.3 Status Review reports are due at least ten (10) calendar days before the hearing;

3. All other reports shall be due a reasonable number of days before the hearing but in no event less than forty-eight (48) hours before.

B. If the social study report is not timely filed or made available to all parties, then any affected party may request a continuance or the court on its own motion may continue the hearing to the extent permitted by law.

C. The names of any experts to be called by any party and copies of their reports, if not part of a social study report prepared by DCFS, shall be provided to all parties at least ten (10) days before the hearing. **(Effective January 1, 2007, Rule 6.3.9 renumbered effective January 1, 2006; adopted as Rule 52.9 effective January 1, 1999)**

6.3.10 Settlement Conferences

Settlement conferences shall be calendared and held prior to every contested hearing, unless deemed unnecessary by the judicial officer setting the contested hearing.

The trial attorneys and all parties shall be present at the settlement conference, unless excused by the court. All parties shall be readily available either in person or by telephone at the direction of their attorneys. A representative of DCFS with authority to settle cases shall be present at the settlement conference. **(Effective January 1, 2007, Rule 6.3.10 renumbered effective January 1, 2006; adopted as Rule 52.10 effective January 1, 1996)**

6.3.11 Requests for Transcripts

Any party wanting the court to pay for a reporter's transcript shall apply in writing to the judicial officer who heard the matter in question or to the Presiding Judge of the Juvenile Court. Alternatively, a party may orally request at a court hearing that the court order a transcript be prepared at court expense. A party may order a reporter's transcript prepared at that party's expense without seeking court authorization. **(Rule 6.3.11 renumbered effective January 1, 2006; adopted as Rule 52.11 effective January 1, 1999)**

***(Rule 6.3 renumbered effective January 1, 2006; adopted as Rule 52 effective July 1, 1992*)**

RULE 6.4 MOTIONS AND ORDERS

6.4.1 Motion to Challenge Legal Sufficiency of Petition

In any dependency proceeding the court may entertain a pre-hearing challenge to the petition's sufficiency by a motion to challenge the legal sufficiency of the petition. Such a motion may be made in writing or orally, but must be made as early in the proceedings as possible. The court may rule on the motion at the hearing at which it is made, or may continue the hearing on the motion to another date in order to receive briefing from counsel. If the court sustains the motion, the court may grant leave to amend the pleading in the petition upon any terms as may be just and shall fix the time within which the amendment or amended petition shall be filed. **(Rule 6.4.1 renumbered effective January 1, 2006; adopted as Rule 53.1 effective January 1, 1999)**

6.4.2 Ex Parte Applications/Orders

Ex parte applications for orders are made to the court without formal advance notice to the other parties of the application.

There are three types of ex parte applications: ex parte applications to calendar hearings, routine ex parte applications, and all other ex parte applications. **(Rule 6.4.2 renumbered effective January 1, 2006; adopted as Rule 53.2 effective January 1, 1996)**

6.4.3 Ex Parte Application to Calendar Hearing

A. An ex parte application to calendar a hearing is made by submission of the Ex Parte Application to Calendar and Order form to the judicial officer in whose courtroom the case is assigned. An ex parte application to calendar a hearing shall not be made to a judicial officer other than the judicial officer in whose courtroom the proposed hearing is to be held, except for good cause.

1. If the Ex Parte Application to Calendar and Order form is being used to place on calendar a hearing which does not already have a hearing date, advance notice to all other parties of the intent to submit an Ex Parte Application to Calendar and Order form to a judicial officer in whose courtroom the case is assigned is not required if the proposed date of hearing is more than seven (7) calendar days from the date of submission of the form. Any party choosing to

proceed thus must give all other parties seven (7) calendar days written notice of the hearing date which has been approved by the judicial officer. If the proposed date of hearing is less than seven (7) calendar days from the date of submission of the Ex Parte Application to Calendar and Order form, consent to the proposed hearing date must be sought from the other parties. Consent of party can be reflected by that party initialing the appropriate box on the Ex Parte Application to Calendar and Order form.

An Ex Parte Application to Calendar and Order form seeking a hearing date less than seven (7) calendar days from the date of submission of the form may be submitted to the judicial officer even if written consent to the proposed hearing date has been withheld by another party, so long as said party was given an opportunity to give written consent to the proposed hearing date. The party submitting the Ex Parte Application to Calendar and Order form shall memorialize on the form the party's refusal to give written consent to the proposed hearing date.

2. If the Ex Parte Application to Calendar and Order form is being used to obtain a continuance of a hearing date which is already on calendar, the Ex Parte Application to Calendar and Order form, which shall adequately specify the reason the continuance is sought and the length of the continuance being sought, shall first be presented to all parties. If any party objects to the proposed continuance, or requests a hearing on the request for a continuance, that party should so specify on the Ex Parte Application to Calendar and Order form. Once the Ex Parte Application to Calendar and Order form has been initialed by all parties, the form shall be presented to the judicial officer in whose courtroom the hearing is currently scheduled for consideration.

When presented with an Ex Parte Application to Calendar and Order form requesting a continuance, the judicial officer shall do one of the following:

a. Grant the request for a continuance and select a new hearing date,

b. Deny the request for a continuance, or

c. Set the request for a continuance for hearing and select a date for that hearing.

When the party submitting the completed Ex Parte Application to Calendar and Order form receives that form back from the judicial officer, that party shall file the form with the Clerk's Office and serve copies of the filed form on all parties.

B. If a case has an upcoming hearing date already on calendar, an Ex Parte Application to Calendar and Order form need not be submitted to place on calendar for the same date a separate/different motion on the same case. However, the party seeking to place the separate/different motion on calendar must give ten (10) calendar days written notice of the separate/different motion to all other parties, unless the court, for good cause shown, prescribes a lesser number of days for notice.

C. The Ex Parte Application to Calendar and Order form has no purpose other than to place, change, or continue a hearing date on the court's calendar. The Ex Parte Application to Calendar and Order form is not a substitute for a Welfare & Institutions Code § 388 petition, a formal written motion, or supporting points and authorities. **(Rule 6.4.3 renumbered effective January 1, 2006; adopted as Rule 53.3 effective January 1, 1999)**

6.4.4 Routine Ex Parte Applications

A. Unless counsel for a party has specifically requested advance notice of ex parte applications for out-of-state travel or medical/dental care for the minor, an ex parte application may be made, without advance formal notice, to the judicial officer in whose courtroom the minor's case is assigned, seeking an order permitting the minor to travel out-of-state with the foster parent or care provider, relative, or other appropriate adult acceptable to DCFS, or an order authorizing that medical or dental care be performed on the minor. Any such ex parte applications shall be filed no less than fifteen (15) calendar days prior to the proposed travel or medical/dental care absent good cause shown on the application, or unless the court has specified a greater or lesser period. All such ex parte applications shall include the following information:

1. The name and address of each party to the action, and the name and address of each party's counsel;

2. The efforts made to obtain the consent of and/or give notice to the parents or guardians of the minor of the proposed travel or medical/dental care;

3. If a parent or guardian has refused to agree to the proposed travel or to give consent to medical/dental care, that fact shall be noted on the application, including the ground for the parent’s/guardian's refusal, if known;

4. For any parent or guardian whom DCFS was unable to locate to give notice and/or obtain consent, a description of the efforts made to locate the parent/guardian;

5. The fact the minor's counsel has been notified of the proposed travel or medical/dental care, and said counsel's position on the proposed travel or medical/dental care.

B. When presented with an ex parte application for order authorizing out-of-state travel or medical/dental care, the judicial officer shall either grant the request and

issue the order, or deny the request. If the judicial officer issues the requested order authorizing out-of-state travel or medical/dental care, the party who sought the order shall file the ex parte application form and order with the Clerk's Office and provide copies of the filed ex parte application and order form with all counsel. Any party disagreeing with the order for out-of-state travel or medical/dental care may place the matter on calendar for further consideration.

C. An order nunc pro tunc making corrections, changes or additions to any finding or order generated at a prior hearing may be made by ex parte application where the court made an order or finding that was mistakenly omitted from the minute order. **(Effective January 1, 2007, Rule 6.4.4 renumbered effective January 1, 2006; adopted as Rule 53.4 effective January 1, 1999)**

6.4.5 Non-Routine Applications

A. All ex parte applications other than those discussed in Rules 6.4.3 and 6.4.4 are considered non-routine ex parte applications. All non-routine ex parte applications must be made only upon adequate advance notice to all counsel in accordance with this rule. Non-routine ex parte applications include, but are not limited to, requests for temporary order modifying a visitation order pending a hearing on a concurrently filed Welfare & Institutions Code § 388 petition seeking the same relief on a permanent basis.

B. Non-routine ex parte applications shall be heard at 8:30 a.m. by the judicial officer in whose courtroom the case is assigned.

C. Before submitting an ex parte application and proposed order forms to the judicial officer in whose courtroom the case is assigned for signature, the applicant shall adhere to the following procedures:

1. The applicant shall advise the judicial officer in whose courtroom the case is assigned no later than 3:00 p.m. that a non-routine ex parte application will be made the following morning in that judicial officer's courtroom.

2. The applicant shall give, no later than 4:00 p.m. on the day prior to the proposed ex parte application, advance notice of the time, place, and basic subject matter of the proposed ex parte application to all counsel and the social worker assigned to the case, except for good cause shown or consent of all counsel.

3. The notice given to the other counsel regarding the ex parte application for a non-routine order shall be stated on the Declaration Re Notice of Ex Parte Application form.

D. If the applicant has made a good faith attempt to inform the other counsel regarding the ex parte application but was unable to do so, the efforts made to inform them shall be specified on the Declaration Re Notice of Ex Parte Application form.

E. If the applicant contends that advanced notice to one or more other counsel should not be required, the grounds upon which this contention is based shall be specified on the Declaration Re Notice of Ex Parte Application form. The completed Declaration Re Notice of Ex Parte Application form shall be submitted to the judicial officer with the ex parte application. An ex parte application which is submitted to the judicial officer without the Declaration Re Notice of Ex Parte Application form will be summarily denied.

F. Whenever possible, the ex parte application moving papers and the Declaration Re Notice of Ex Parte Application form, and any responding papers, shall be served on all other counsel as far in advance of the ex parte application as is practicable.

G. Notice of the ex parte application may be excused if the giving of such notice would frustrate the purpose of the order, or cause the minor to suffer immediate and irreparable physical or emotional harm.

H. Notice may also be excused if, following a good faith attempt, the giving of notice is not possible, or if the other counsel do not object to the relief sought by the ex parte application. **(Effective January 1, 2007, Rule 6.4.5 renumbered effective January 1, 2006; adopted as Rule 53.5 effective January 1, 1996)**

6.4.6 Noticed Motions

No noticed motion shall be accepted by the Clerk unless it is accompanied by a proof of service. A noticed motion must give ten (10) calendar days written notice to all other counsel unless the court, for good cause shown, prescribes a lesser number of days for notice. **(Rule 6.4.6 renumbered effective January 1, 2006; adopted as Rule 53.6 effective January 1, 1996)**

6.4.7 Motion for More Restrictive Placement

Any motion by DCFS to modify an existing order to a more restrictive placement shall be implemented pursuant to Welfare & Institutions Code § 387 and California Rules of Court, Rules 5.560(c) and 5.565. A change in an out-of-home, non-relative placement (i.e., foster care, family foster home, or group home) shall not be deemed a more restrictive placement unless the placement change is from a level twelve (12) or lower placement (as defined by State law) to a higher level which requires a mental health certification. Placement in a level thirteen (13) or higher level home is defined as being more restrictive than a level one (1) to level twelve (12) home whether the home be a foster home, a family foster home or a group home. **(Effective July 1, 2007, Rule 6.4.7 renumbered effective January 1, 2006; adopted as Rule 53.7 effective January 1, 1996)**

6.4.8 Motion for Less Restrictive Placement

Any motion by an interested party to modify the court's orders to a less restrictive placement shall follow the procedures outline in Welfare & Institutions Code § 388 and

California Rules of Court, Rules 5.560(d) and 5.570, and these rules. **(Effective July 1, 2007, Rule 6.4.8 renumbered effective January 1, 2006; adopted as Rule 53.8 effective January 1, 1999)**

6.4.9 Petitions for Modification (Consent Calendar Procedure)

The following procedures shall be followed for all Petitions for Modification filed pursuant to Welfare & Institutions Code § 388, except those petitions seeking termination of a guardianship pursuant to Welfare & Institutions Code § 366.3, subdivision (b), and California Rules of Court, Rule 5.740.

A. Each Department will hold a "388" consent calendar on a designated day of each week at 8:30 a.m., at which time the court will act upon those petitions to which there is no objection and set for hearing those petitions to which any party objects.

B. Petitioner shall select the consent calendar date for the matter to be heard based upon a date which allows at least five (5) court days' advance notice to all parties. Petitioner is to provide copies of the petition to all parties and file the original with an attached proof of service. Copies are to be provided to both DCFS and County Counsel.

C. The Clerk shall file the Petition and calendar it on the "388" consent calendar, which shall be separate from the regular calendar. The Clerk will make available copies of the "388" consent calendar to the office of each counsel of record and DCFS seven (7) calendar days preceding the date of the "388" consent calendar.

D. At the hearing, if all parties consent, the matter will be submitted without hearing and a ruling will be entered. If any party enters an objection, which may be communicated to the court in person, in writing, or telephonically, the matter will be set for hearing.

E. The court's ruling, or the date of the hearing if one is set, will be noted on a minute order.

F. Petitions seeking an interim order are to be presented to the court prior to filing and service. Interim orders will be granted upon a showing of good cause. **(Effective July 1, 2007, Rule 6.4.9 renumbered effective January 1, 2006; adopted as Rule 53.9 effective July 1, 1999)**

6.4.10 Visitation

A. Visitation between a minor and the minor's parents should be as frequent as possible based on the individual circumstances of the case.

B. Orders for visitation may be issued at any scheduled hearing. Arrangements for visitation may be modified by the filing and approval of a Welfare & Institutions Code § 388 petition.

C. Unless specified otherwise by the court, the following definitions shall apply to visitation orders:

1. Supervised Visits: Visits supervised by DCFS, unless the court orders that a third party may supervise the visits.

2. Reasonable Visits: Supervised or unsupervised visits which may last up to one (1) day but shall not include overnight.

3. Liberal Visits: Visits which may include overnight and weekends and up to a maximum of thirteen (13) consecutive days.

4. Extended Visits: Visits which last beyond thirteen (13) consecutive days. Extended visits do not become placements, unless otherwise ordered by the court.

D. Any significant decrease from the court-ordered level of a parent's/party's level of visitation shall be presented to the affected parent/party for comment before being submitted to the court. The court may set a hearing on the issue after hearing the parent's/party's comments on the proposed reduction. **(Effective January 1, 2007, Rule 6.4.10 renumbered effective January 1, 2006; adopted as Rule 53.10 effective January 1, 1996)**

6.4.11 Travel Authorization

Unless ordered otherwise by the court, a minor's care provider may authorize travel by the minor within the State of California with the concurrence of DCFS and, when possible, notice to the parent. Any travel for the minor out of the State of California shall require prior court approval. Any application to the court for orders regarding travel of the minor shall comply with Juvenile Rule 6.4.4 and shall state what efforts have been made to notify the parent(s) and their response, if any. **(Effective January 1, 2007, Rule 6.4.11 renumbered effective January 1, 2006; adopted as Rule 53.11 effective January 1, 1996)**

6.4.12 Application to Commence Proceeding

When a CPS referral is made to DCFS and if DCFS decides not to intervene or fails to report the outcome of the referral to a reporting party within ten (10) days, any person may apply to DCFS requesting DCFS to file a petition pursuant to Welfare & Institutions Code § 329. In that application, the applicant shall give notice and identifying information of any pending family law-related proceeding. If a family law-related proceeding is pending, a copy of the application shall also be sent to Family Court Services by the applicant. DCFS shall respond to the application as soon as possible or within three (3) weeks after submission of the application. If applicable, DCFS shall notify Family Court Services of its response. If the applicant is dissatisfied with the decision of DCFS, the applicant may petition the Juvenile Court to order DCFS to file a Welfare & Institutions Code § 300 petition as provided by Welfare & Institutions Code § 331. **(Effective January 1, 2007, Rule 6.4.12 renumbered effective January 1, 2006; adopted as Rule 53.12 effective January 1, 1999)**

6.4.13 Request for Rehearing

Any party to a juvenile delinquency proceeding requesting a rehearing within ten (10) calendar days after service of a copy of an order and findings shall, within one (1) judicial day after filing a request for rehearing also serve a copy of the request upon the referee from whose decision the request has arisen.

The referee shall immediately direct the court reporter, by minute order, to prepare a transcript of the appropriate hearing and deliver a copy of the minute order to the Presiding Judge of the Juvenile Court and to the counsel for the party requesting the rehearing.

Within ten (10) calendar days after being ordered to prepare the transcript, the court reporter shall deliver the transcript to the Presiding Judge of the Juvenile Court. **(Effective January 1, 2007, Rule 6.4.13 renumbered effective January 1, 2006; adopted as Rule 53.13 effective January 1, 1996)**

(Rule 6.4 renumbered effective January 1, 2006; adopted as Rule 53 effective July 1, 1992)

RULE 6.5 COORDINATION OF COURT PROCEEDINGS

6.5.1 Court Management of Child Abuse or Neglect Cases

It is the policy of the Superior Court to identify and coordinate custody proceedings involving the same minor, which may appear in multiple legal settings. It is further the policy of the Superior Court to coordinate the efforts of the different court systems (including, but not limited to, the family, juvenile, child support, and probate courts) so that the minor's needs are served and the resources of the family and the court are not wasted. To these ends the Superior Court and the agencies serving the court shall cooperate to increase the exchange of information and to determine the most appropriate forum for the resolution of the issues relating to the minor. **(Effective January 1, 2007, Rule 6.5.1 renumbered effective January 1, 2006; adopted as Rule 54.1 effective January 1, 1999)**

6.5.2 Report Pursuant to Penal Code § 11166

If during the pendency of a family law proceeding a child abuse or neglect allegation against one of the minor's parents comes to the attention of a Family Court Services staff member or other mediator or evaluator, that person shall first determine whether the allegation must be reported to a child protection agency pursuant to Penal Code § 11166. If that person determines the allegation does not fall within the description of § 11166, he or she need not make a report. However, any other person may report the allegation to a child protection agency. **(Effective January 1, 2007, Rule 6.5.2 renumbered effective January 1, 2006; adopted as Rule 54.2 effective January 1, 1996)**

6.5.3 Child Abuse or Neglect Investigation

When DCFS receives a report of suspected child abuse or neglect during the pendency of a family law-related proceeding, it shall investigate the matter pursuant to the regulations of the California Department of Social Services. DCFS shall inform

Family Court Services of any decisions it makes concerning the child abuse or neglect investigation. If DCFS determines that further investigation is necessary, it shall contact the appropriate investigating agency immediately so that all investigative efforts can be coordinated. **(Effective January 1, 2007, Rule 6.5.3 renumbered effective January 1, 2006; adopted as Rule 54.3 effective January 1, 1996)**

6.5.4 Suspension of Family Law and Probate Proceedings

A. **DCFS Report**. After a report of suspected child abuse or neglect has been made to a child protection agency, any custody and visitation proceedings in the Family Law or Probate Department are suspended, except that the Family Law or Probate Department shall have the power to make temporary protective orders to ensure the safety of the minor. The suspension shall remain for eighteen (18) calendar days from the report or until DCFS indicates in writing that it will take no action in the matter, whichever occurs first.

B. **Welfare & Institutions Code § 300 Petition, Juvenile Court**. If a petition pursuant to Welfare & Institutions Code § 300 is filed in the Juvenile Court, all custody and visitation proceedings in the Family Law or Probate Department are suspended. Thereafter, custody and visitation issues shall be determined by the Juvenile Court. The Family Law or Probate Department shall resume custody or visitation proceedings only after written authorization is received from the Juvenile Court. **(Effective January 1, 2007, Rule 6.5.4 renumbered effective January 1, 2006; adopted as Rule 54.4 effective January 1, 1999)**

6.5.5 Informal Supervision Agreement

If, during DCFS's investigation, one or both parents reach an informal supervision agreement pursuant to Welfare & Institutions Code § 301, a copy of that agreement shall be sent immediately to DCFS, to Family Court Services and to each parent. **(Effective January 1, 2007, Rule 6.5.5 renumbered effective January 1, 2006; adopted as Rule 54.5 effective January 1, 1996)**

6.5.6 Coordination of Cases

At any time during the process described herein, the Presiding Judges of the Family Law and Probate Departments and the Juvenile Court are encouraged to discuss problems relating to the coordination of cases involving child abuse or neglect allegations. **(Effective January 1, 2007, Rule 6.5.6 renumbered effective January 1, 2006; adopted as Rule 54.6 effective January 1, 1999)**

6.5.7 Petition for Dismissal

Whenever any interested party believes that Juvenile Dependency Court intervention on behalf of a minor is no longer necessary, application may be made to the Juvenile Dependency Court pursuant to Welfare & Institutions Code § 388 or at any regularly scheduled hearing to have the case dismissed. If the application is granted, any future litigation relating to the custody, visitation and control of the minor shall be heard in the Family Law Department or other appropriate department. **(Effective January 1, 2007, Rule 6.5.7 renumbered effective January 1, 2006; adopted as Rule 54.7 effective January 1, 1999)**

6.5.8 Juvenile Court Custodial Order

If the Juvenile Dependency Court determines that jurisdiction of the Juvenile Court is no longer necessary for the protection of the minor, the court may create a custodial order consistent with the needs of the minor and thereafter dismiss the juvenile petition and case. (See Judicial Council form JV-200.) Any party may object to the proposed dismissal and be heard on the issues. **(Effective January 1, 2007, Rule 6.5.8 renumbered effective January 1, 2006; adopted as Rule 54.8 effective January 1, 1996)**

6.5.9 Maintenance of Orders in Court Files

A. **Juvenile Court**. The original court order shall be filed in the Family Law Department or other department and endorsed copies shall be filed in the Juvenile Court file. A copy of the endorsed-filed order shall be mailed to the attorneys and parties.

B. **Superior Court**. If no court file exists in the Family Law Department or other department or in any other jurisdiction, the Clerk shall create a file under the names of the minor's parents. The file shall contain a copy of the Juvenile Court order. Pursuant to Welfare & Institutions Code § 362.4, there shall be no filing fee. **(Rule 6.5.9 renumbered effective January 1, 2006; adopted as Rule 54.9 effective January 1, 1999)**

***(Rule 6.5 renumbered effective January 1, 2006; adopted as Rule 54 effective July 1, 1992*)**

RULE 6.6 MEDICAL ISSUES

6.6.1 Health Assessment

In order for minors detained by or in the custody of the DCFS to receive necessary care of their physical and mental health, and to not endanger the health and welfare of other persons, medical facilities, clinics and providers within the County of Fresno are authorized to provide, and DCFS is authorized to secure, the following services to all such minors, which services follow the Statement of the Committee on Adolescents of the American Academy of Pediatrics, Health Care for Children and Adolescents in Detention Centers, Jails, Lock-ups, and other Court Sponsored Residential Facilities:

A. A comprehensive health assessment and physical examination.

B. Any clinical laboratory tests the physician determines are necessary for the evaluation of the minor's health status.

C. Upon consent of the minor, sexually active minors may be screened for venereal disease. Contraceptive devices may be furnished to any minor upon the minor's request.

D. Any immunization necessary to bring a minor's immunization up to date, and, if immunizations are recommended by the American Academy of Pediatrics for that child's age.

E. Any routine medical care required based on the results of the comprehensive health assessment, and any routine medical care required for the care of illnesses and injury, including the use of standard X-rays. Routine medical care excludes any medical procedure requiring local or general anesthesia. Routine medical care as referred to above includes:

1. First aid care for conditions which require immediate assistance from a person trained in basic first aid as defined by the American Red Cross or its equivalent;

2. Clinic care for ambulatory minors with health care complaints which are evaluated and treated on an out-patient basis;

3. Inpatient bed care for illness or injury, which requires limited observation and/or management and does not require admission to a licensed hospital. Routine medical care does not include blood transfusions or inpatient care for illness or diagnosis, which requires optimal observation and/or management in a licensed hospital.

F. A mental health status evaluation and necessary mental health services except no placement in an inpatient psychiatric facility shall occur without compliance with Welfare & Institutions Code §§ 319.1, 500 et seq., 5585 et seq. and 6550 et seq.

G. A dental assessment, including X-rays when appropriate, and any routine dental treatment required based on the results of the dental assessment. Routine dental treatment does include the use of local anesthesia but excludes any procedure requiring general anesthesia.

Reasonable efforts should be made to obtain the consent of the parent or legal guardian for non-routine medical care while the minor is temporarily detained or placed out-of-home. In the event consent cannot be obtained (e.g., parent or guardian is not available to give consent), DCFS shall request a court order for any non-routine health care and shall comply with Juvenile Rule 6.4.4. **(Effective January 1, 2007, Rule 6.6.1 renumbered effective January 1, 2006; adopted as Rule 55.1 effective January 1, 1999)**

6.6.2 Authorization for Use of Psychotropic Drugs in Juvenile Dependency Proceedings

Family Code § 6924 sets forth the general guidelines for providing mental health treatment to minors. Pursuant to Welfare & Institutions Code §§ 369(b) and 369.5 and California Rules of Court, Rule 5.640, for any minor removed from the custody of the parent or guardian pursuant to Welfare & Institutions Code §§ 306, 309, or by order of

the Juvenile Court, approval must be obtained for the minor (if under 18 years of age) to be treated with psychotropic medication.

Absent a medical emergency as defined in Welfare and Institutions Code § 369(d), authorization from the Juvenile Court (or from someone authorized by the court) must be obtained prior to administering psychotropic medication to a minor under the jurisdiction of the Juvenile Court. If the minor has a current prescription for psychotropic medication at the time a juvenile dependency proceeding is commenced, a medical professional may continue to authorize administration of, and the minor may continue using, the medication pending Juvenile Court review.

The treating medical professional is required to notify the Juvenile Court whenever a treatment plan for psychotropic medication is commenced without consent of a parent or guardian. Although this procedure is an additional task for physicians, the benefit of Juvenile Court approval in support of the physician prescribing these medications is a protection for both physician and patient.

A. **Commencement of Treatment**. Procedures to be followed in obtaining court authorization are as follows:

At the time a minor appears before a physician for treatment, and if the consent of the parent or guardian has not been obtained, then a Judicial Council of California "Application and Order for Authorization to Administer Psychotropic Medication-Juvenile" form JV-220 (form available from the Clerk of the Juvenile Court-Dependency) should be presented for completion by the minor's immediate care provider or DCFS. (Note: a care provider, including a relative, may not sign the consent form unless the person is also the minor's legal guardian or has written authorization from a parent).

B. **Completing the Application**. Upon prescribing psychotropic medication, the treating physician is to complete each of the following steps:

1. Legibly and fully complete pages 1-4 of form JV-220 Application.

2. Send the completed JV-220 Application by facsimile, U.S. mail, or personal delivery to:

The Clerk of the Juvenile Court-Dependency
1255 Fulton Mall
Fresno, California 93721
FAX: (559) 457-4801

3. If any of the medications being recommended is a Selective Serotonin Reuptake Inhibitor (SSRI), then send a facsimile copy of the JV-220 Application to the Fresno County Chief Psychiatrist for further review and recommendation.

C. **Hearing Date.** Upon receipt of the completed JV-220 Application, DCFS will determine a hearing date that allows sufficient time for all parties to be provided notice of the JV-220 Application and to file an opposition.

D. **Opposition to Application**. Any party who wishes to oppose the JV-220 Application must, within two (2) court days after receiving notice of the JV-220 Application:

1. Complete and file a statement of opposition (Form JV-220A) with the Clerk of the Juvenile Court-Dependency; and

2. Provide notice of the opposition to all parties and attorneys.

E. **Denial of Application**. DCFS may be contacted directly at (559) 488-2994, regarding any denial of the JV-220 Application medication request or any modifications ordered. **(Effective January 1, 2010, Rule 6.6.2 renumbered effective January 1, 2006; adopted as Rule 55.2 effective January 1, 1999)**

6.6.3 Six Month Renewal for all Psychotropic Drug Orders

Order authorizing administration of psychotropic medication shall expire no later than six (6) months from date of issuance without prejudice to a renewal request using the above procedures. **(Effective January 1, 2007, Rule 6.6.3 renumbered effective January 1, 2006; adopted as Rule 55.3 effective January 1, 1996)**

***(Rule 6.6 renumbered effective January 1, 2006; adopted as Rule 55 effective July 1, 1992*)**

RULE 6.7 CONFIDENTIALITY

6.7.1 Release of Information Relating to Juveniles

A. **Application of Rule.** Juvenile Court records are confidential. In accordance with Welfare & Institutions Code §§ 827 and 828, California Rules of Court, Rule 5.552, and case law, disclosure and use of juvenile records shall be governed by this rule.

1. Definitions.

a. "Juvenile records and information" as used in this rule means any of the following:

1) Any document or record filed in any Juvenile Court proceeding,

2) Any document, record or information concerning a minor made available to the probation officer, CPS worker, GAL or CASA in preparing a report to the Juvenile Court; and

3) Any probation department, CPS, CASA, or state or local law enforcement document, record or information relating to a juvenile contact, or to a hold or arrest of a juvenile, even if Juvenile Court proceedings have not been instituted.

b. "Otherwise confidential" refers to records, which are also confidential under one or more other statutes (including, but not limited to, Civil Code § 56, et seq.; Welfare & Institutions Code §§ 5328, Penal Code § 11143, 11167, 13300; Government Code § 6254; Health & Safety Code §§ 10850, 11977, 120980). Note: Such records may not be shared with other agencies or individuals without the consent of the record holder or a court order.

2. Nothing in this rule is intended to limit the exchange of information and documents as provided by Penal Code § 11166 et seq.

3. Persons or agencies receiving records or information pursuant to this rule shall not disclose such records or information to another person or agency unless such disclosure is authorized by the Juvenile Court or this rule.

B. **Release of Documents.**

1. Juvenile records and information cannot be obtained by civil or criminal subpoena. Unless otherwise authorized by law, juvenile records and information may be disclosed only by an order of the Juvenile Court as provided for by Welfare & Institutions Code § 827 and California Rules of Court, Rule 5.552, except as subdivisions (d) and (e) of Rule 5.552 are modified herein. For good cause shown, and compelling reasons, if a petition pursuant to § 827 seeks juvenile records and information for a court proceeding pending before a regularly sitting judge of the Superior Court of Fresno County, that judge shall be deemed to be a judge of the Juvenile Court, for purposes of applying this rule. Any order made by such a judge shall be filed with the Juvenile Court.

2. Once a petition to declare a person a dependent child or ward of the Juvenile Court has been filed, juvenile records and information, unless otherwise confidential, may be released without a court order to authorized Juvenile Court personnel, including judicial officers and the Clerk, and to those persons or agencies designated by Welfare & Institutions Code §§ 827 and 828.

3. If access to juvenile records and information is necessary and relevant in connection with, or in the course of, a civil or criminal investigation, a proceeding brought to declare a person a dependent child or ward of the Juvenile Court, or a proceeding involving custody, visitation, adoption, guardianship, conservatorship, emancipation, or domestic violence, the agencies listed below or their duly authorized representatives may share with any of the other listed agencies and their authorized representatives such records and information, not

otherwise confidential, as the holder of the records and information deems to be appropriate and in the best interest of the minor. An agency or its authorized representative may petition the Juvenile Court for disclosure of any records or information not so disclosed.

a. City Attorney offices;

b. Coroner offices;

c. Child Protective Services;

d. County Counsel offices;

e. Probation departments (including their Victim/Witness Assistance programs);

f. District Attorney offices;

g. Family Court Services;

h. Persons or agencies specified in Penal Code § 11167.5(b);

i. Federal, state or local law enforcement agencies;

j. Superior Court judicial officers and their immediate court personnel;

4. The court recognizes that certain agencies need to inspect juvenile court records to accomplish the legitimate goals of the juvenile justice system. Such goals include the need to adequately evaluate an individual minor's background in order to develop a treatment plan, or the need to audit any part of the juvenile justice system to evaluate its operation. To that end, the agencies listed in Rule 6.7.1(B)(3) above may disclose juvenile records, not otherwise confidential, to the following agencies upon providing the agency holding the juvenile records a declaration under penalty of perjury setting forth the need:

a. County Mental Health departments;

b. Department of Motor Vehicles;

c. Federal, state, county and city auditors;

d. Public guardian offices; and

e. Other agencies as authorized in writing by the Presiding Judge of the Juvenile Court, for good cause shown.

5. Law enforcement agencies may disclose to a minor's parent(s) or legal guardian(s), and CPS or County Probation may disclose to a foster parent caring for a minor, such juvenile records of the minor, not otherwise confidential, as the agency deems appropriate and in the best interest of the minor.

6. Mental health records and information of a juvenile may be disclosed to the extent authorized by Welfare & Institutions Code § 5328 (e.g., written parental consent) or 18961 ("multi-disciplinary personnel teams").

7. Law enforcement agencies may disclose information, which is not otherwise confidential, from police reports written by officers of the agency concerning traffic accidents (excluding any driving record report) or incidents of criminal acts alleged to have involved one or more juveniles, to a person or entity (or its authorized representative) who was damaged by the accident or who was a victim of the crime. The information is to be released only for purposes of assisting the person or entity in obtaining reimbursement for injuries or damages caused by the conduct of the minor(s). The person to whom the information is released shall agree in writing that the person will not disclose any of the information released to him or her to anyone other than the person's attorney, insurance adjuster, or one legally representing the person's or entity's interest in recovering damages resulting from the incident. The person to whom the information is released shall also agree in writing that the information will be used for no purpose other than as stated above. Any document released pursuant to this paragraph shall be clearly marked "CONFIDENTIAL." It shall state that it is being provided pursuant to this rule, and that any distribution or use other than as allowed herein is a violation of this rule and that the violator may be subject to sanctions. Notwithstanding this rule, if the information identifying any juveniles is deleted, traffic accident reports may also be released to any state or local engineering department for use in the normal scope of the department's duties.

8. Nothing in this rule shall be used to limit disclosure of information as authorized by Welfare & Institutions Code §§ 627, 828, and 829. Additionally, the Fresno County Probation Department is authorized to inspect and utilize those records specified in Welfare & Institutions Code § 504 relating to serious habitual offenders.

9. The documents referenced below may be released to those agencies or individuals as specified herein.

a. CPS is authorized to disclose to the parties and their actual or prospective counsel at a dependency court detention hearing such documents as CPS deems to be appropriate as part of its prima facie statement including, but not limited to, the identity of all persons who reported any allegation of child abuse or neglect (see Penal Code § 11167(d)). If CPS chooses to delete the identification of the reporting

party or parties, and a party to the dependency proceeding wants the identification disclosed, then that party may request that the court order such disclosure. The court shall not issue such an order except for good cause shown and only after an in camera review with CPS and/or its attorney of record having an opportunity to be heard.

b. In cases where a minor who has been taken into custody by CPS is abducted, then CPS may provide to the Child Abduction Unit of the District Attorney's office the following documents and information:

1) Copies of any law enforcement reports which brought the matter to the attention of CPS;

2) Copies of the juvenile dependency petition concerning that minor;

3) Copies of all minute orders or other court orders which show the Juvenile Court's jurisdiction over the minor, any knowledge of this jurisdiction by the suspected child abductor(s), and/or any appearance before the court by the suspected child abductor(s);

4) Copies of any warrants or body attachments for the child or suspected child abductor(s);

5) Any addresses, telephone numbers, or other identifying information which could assist the District Attorney's office in locating the child or suspected child abductor(s).

c. Whenever a law enforcement agency has prepared a report referencing one or more juveniles involved in an incident related to school activity or attendance that occurred at any time within the scope of Education Code § 48900, the agency may release that report to a school official or other person authorized to act on behalf of the school, provided that the requesting person declares under penalty of perjury that the information in the report will be used exclusively for purposes of possible suspension, expulsion, or other disciplinary action against one or more minors referenced in the report and/or for seeking restitution under Education Code § 48904.

d. Whenever a juvenile has been assessed a fine or otherwise has been ordered by the Juvenile Court or Juvenile Court Traffic hearing officer to pay monies to the County, the court is authorized to enter into the County of Fresno Automated Court System (COFACS) the name, address, telephone number, social security number, case number, amount ordered to be paid, and such other information as is reasonably necessary

for the court and/or the Revenue Reimbursement Division (RRD) of the Auditor-Controller/Treasurer-Tax Collector's Office for the collection of said monies. The court shall take reasonable steps to limit access to this information in COFACS to court and RRD personnel.

10. The court recognizes that state prosecutors need to inspect and disclose certain juvenile court records as necessary to plead and prove prior qualifying juvenile adjudications within the meaning of Penal Code § 667 (commonly known as "Three Strikes"). To that end, a District Attorney of any county of the State of California, or the Attorney General of the State of California, and their agents and employees, are entitled to access any and all juvenile court records not previously ordered sealed pursuant to Welfare & Institutions Code § 781, related to a prior qualifying juvenile adjudication within the meaning of Penal Code § 667(d)(3). The District Attorney, Attorney General and their agents and employees are permitted to disclose, without further order of this court, so much of such records as is necessary to plead and prove an accusatory pleading pursuant to Penal Code § 667.

The enactment of Penal Code § 667 constitutes good cause to retain records of juvenile adjudications qualifying under that statute. No such juvenile records shall be routinely destroyed as provided in Welfare & Institutions Code §§ 781(d) and 826(a). Nothing in this rule is intended to limit the right of the person who is the subject of a juvenile court record to petition the court for the destruction of such records.

C. **Petition Procedure.** Anyone seeking to inspect, copy or obtain juvenile records or information or testimony relating thereto, not otherwise specifically provided for by this rule, shall comply with the following requirements.

1. Juvenile records or information possessed by the Department of Children and Family Services or pertaining to a dependent of the court:

a. Before filing the petition, petitioner shall contact Fresno County Counsel and provide the name and date of birth of the minor, and the nature of the records or information sought.

b. Fresno County Counsel will obtain from the Department of Children and Family Services information identifying parties and attorneys, and their addresses for notice. In those cases where there is, or has been, a juvenile court case, the attorneys appointed to represent the parties in that case shall be identified to petitioner.

c. Fresno County Counsel shall provide this information to petitioner, as well as a preliminary indication as to whether there will be opposition by the Department of Children and Family Services to the petition for disclosure.

d. Petitioner shall serve all parties and attorneys with a copy of the completed Petition for Disclosure of Juvenile Court Records (Judicial Council form JV-570). Forms are available from the Juvenile Court Clerk's Office.

e. Before filing the petition, petitioner shall make good faith efforts to meet and confer with all parties for the purpose of obtaining a signed stipulation regarding release of the records or information, including any limitations on scope or content of the release. See sample stipulation in Appendix D3.

f. If all parties sign a stipulation, petitioner shall file the petition and signed stipulation with the Juvenile Court, and serve them upon all parties. The court shall review and consider the petition and stipulation and shall grant or deny the petition, or order the matter to be set for hearing.

g. If a stipulation is not signed by all parties, petitioner shall file the petition with the Juvenile Court, along with a declaration setting forth petitioner's efforts to meet and confer with all parties and the reason or reasons that a stipulation could not be obtained, and serve them upon all parties. The court shall review and consider the petition and declaration and shall grant or deny the petition, or order the matter to be set for hearing.

2. Juvenile records or information possessed by the Probation Department or local law enforcement agencies:

a. Petitioner shall serve the affected juvenile, or the juvenile's attorney if known, and the local law enforcement agency with a copy of the completed Petition for Disclosure of Juvenile Court Records (Judicial Council form JV-570). Forms are available from the Juvenile Court Clerk's Office.

b. Before filing the petition, petitioner shall make good faith efforts to meet and confer with all parties for the purpose of obtaining a signed stipulation regarding release of the records or information, including any limitations on scope of content of the release. See sample stipulation in Appendix D3.

c. If all parties sign a stipulation, petitioner shall file the petition and signed stipulation with the Juvenile Court, and serve them upon all parties. The court shall review and consider the petition and stipulation and shall grant or deny the petition, or order the matter to be set for hearing.

d. If a stipulation is not signed by all parties, petitioner shall file the petition with the Juvenile Court, along with a declaration setting forth petitioner's efforts to meet and confer with all parties and the reason or reasons that a stipulation could not be obtained, and serve them upon all parties. The court shall review and consider the petition and declaration and shall grant or deny the petition, or order the matter to be set for hearing.

3. Upon an order that a hearing be held, the Clerk shall set the hearing within ten (10) court days and cause notice to be served upon all parties, as provided for in California Rules of Court, Rule 5.552.

4. Responsive pleadings shall be filed and served no later than two (2) court days prior to the hearing. **(Effective July 1, 2007, Rule 6.7.1 renumbered effective January 1, 2006; adopted as Rule 56.1 effective July 1, 1999)**

6.7.2 Release of Records to Parties and Their Attorneys

Any party or their attorney in any Welfare & Institutions Code § 300 matter shall be given access to all unsealed dependency records relating to the minor which are held by the Clerk. **(Rule 6.7.2 renumbered effective January 1, 2006; adopted as Rule 56.2 *effective January 1, 1999*)**

6.7.3 Access to Courtroom by Non-Parties

Unless specifically permitted by statute, Juvenile Court proceedings are confidential and shall not be open to the general public.

The court encourages interested persons including trainees and students to attend juvenile proceedings in order better to understand the workings of the Juvenile Court. The court retains the discretion to determine in each case whether any such interested party shall remain in the courtroom.

The court or its agent shall remind each such non-party that the names of parties and any actual or potentially identifying information from any case is confidential and shall not be further disclosed to anyone outside of the court.

The court, on its own or at the request of any party, may require a person attending a Juvenile Court proceeding to sign a written agreement or state under oath that he or she will comply with all confidentiality requirements. **(Rule 6.7.3 renumbered effective January 1, 2006; adopted as Rule 56.3 *effective January 1, 1996)***

(Rule 6.7 renumbered effective January 1, 2006; adopted as Rule 56 effective July 1, 1992)

(Chapter 6 amended effective January 1, 2006; adopted as VI effective July 1, 1992)

CHAPTER 7. PROBATE RULES

RULE 7.1 PLEADINGS

7.1.1 Form of Documents Presented for Filing in Probate Matters

A. When printed forms are reproduced on the front and back of a single sheet, the back sheet shall be inverted (tumbled) so that it can be read when affixed at the top in a file folder.

B. All persons filing as self-represented shall file with the court a separate verified declaration regarding his or her residence address, if the residence is not the address of record in the proceeding.

C. When a petition or other request for relief is presented to the court, the Probate Code section that allows the requested relief must appear below the title of the pleading.

D. If a beneficiary, heir, child, spouse, or registered domestic partner in any action before the Probate Court is deceased, that person's date of death shall be included in the petition.

E. When any document is filed for which a hearing is requested, an extra copy of the first page of the pleading shall be provided to the Clerk.

F. A proposed Order shall be submitted with all pleadings that request relief. If the proposed Order is not received in the Probate Filing Clerk's Office ten (10) days before the scheduled hearing, a continuance may be required.

G. All documents relating to a matter set for hearing shall have the hearing date, time and department set forth on the face of the document.

H. All documents containing attachments, schedules or exhibits shall be indexed and tabbed at the bottom. Each page shall have page numbers to facilitate review by the Probate Examiner's Office and the court. **(Rule 7.1.1 renumbered effective January 1, 2006; adopted as Rule 70.1 effective July 1, 2004)**

7.1.2 Filing Fees for Trust Matters

All initial proceedings for court supervision of trusts (including but not limited to testamentary trusts funded by a probate) and Petitions to Establish Special Needs Trusts are new actions, and require assignment of a new case number and payment of a current filing fee. **(Rule 7.1.2 renumbered effective January 1, 2006; adopted as Rule 70.2 effective January 1, 2004)**

(Rule 7.1 renumbered effective January 1, 2006; adopted as Rule 70 effective July 1, 1992)

RULE 7.2 PROBATE APPEARANCES

7.2.1 Appearance Requirements

Court appearances are required at all hearings unless the matter has been recommended for approval (see Rule 7.3). When an appearance is required, local attorneys or unrepresented parties are expected to appear in person or by telephone, pursuant to California Rule of Court 3.670. **(Effective July 1, 2008; Rule 7.2.1 renumbered effective January 1, 2006; adopted as Rule 71.1 effective January 1, 2004)**

7.2.2 Telephonic Appearances

When telephone appearances are allowed, attorneys or parties may appear by "Court Call," by making prior arrangements with the private company that administers the program. Court Call may be arranged by calling (888) 882-6878, or the telephone number of any other vendor as approved by the Court. **(Effective July 1, 2008; Rule 7.2.2 renumbered effective January 1, 2006; adopted as Rule 71.2 effective January 1, 2004)**

(Rule 7.2 renumbered effective January 1, 2006; adopted as Rule 71 effective July 1, 1992)

RULE 7.3 PRE-APPROVED MATTERS/PROBATE EXAMINERS

A. All matters set for hearing are reviewed in advance by Probate Examiners. If the matter is submitted properly, if all procedural requirements have been satisfied, and if the matter does not require discretionary consideration by the Probate Judge, the matter will be pre-approved, and a court appearance will be unnecessary.

B. The telephone "Hot-Line" is recorded daily at 12 Noon, and contains a list of pre-approved and continued cases on the next day's calendar. The telephone number is (559) 457-1888 (option 1).

C. Pre-approved matters are called by the court at the time set for hearing. If there are no objections, and if the Probate Judge approves, the Order will be signed at that time. If someone appears at the hearing to object, or if the Probate Judge does not approve the petition, a new hearing date will be set and a copy of the minute order will be mailed to the moving party or attorney.

D. A copy of the Probate Examiner Notes on all non-confidential matters is available upon request and also available on www.fresnosuperiorcourt.org.

E. If a matter is not pre-approved due to procedural irregularities, parties may submit to the Probate Filing Clerk additional documents to cure the irregularities or omissions, up to 24 hours before the hearing. Any additional documents received less than 24 hours before the hearing may not be considered by the court, and the matter may need to be continued. **(Effective January 1, 2012; Rule 7.3 renumbered effective January 1, 2006; adopted as Rule 72 effective January 1, 2004)**

RULE 7.4 CONTINUANCES

7.4.1 Regularly Calendared Matters

On the call of the calendar, matters not ready for hearing shall be continued by the court. The length of continuance shall be determined upon the facts and size of the calendar. A matter is considered not ready for hearing if notices, supplements, or other documentation curing all discrepancies, other than strictly court-determined matters, are not submitted to the Probate Examiner's Office at least twenty-four (24) hours in advance of the hearing date. If the matter is not ready on the continued date, it may be ordered off calendar or may be denied without prejudice unless a request for continuance is granted by the court upon the personal appearance by counsel or the petitioner, if self-represented. **(Rule 7.4.1 renumbered effective January 1, 2006; adopted as Rule 73.1 effective January 1, 2004)**

7.4.2 Objections

The court may continue a matter so that written objections may be filed. When a matter has been continued to allow written objections, they shall be filed and served on all interested parties no later than five (5) days prior to the continued hearing date, unless otherwise ordered by the court. **(Rule 7.4.2 renumbered effective January 1, 2006; adopted as Rule 73.2 effective January 1, 2004)**

7.4.3 Limitations on Continuances

Status hearings and hearings for 30-day review of ex-parte temporary guardianship or conservatorship orders may not be continued except by the judge at the time of hearing. For all other matters, Probate Examiners may, upon a showing of good cause, grant a maximum of two continuances on any particular matter. Any further continuances must be made in court at the time set for hearing. **(Rule 7.4.3 renumbered effective January 1, 2006; adopted as Rule 73.3 effective January 1, 2004)**

7.4.4 Notification of Parties

A party obtaining a continuance shall notify all parties who have received notice of the hearing by close of business the day prior to the hearing and shall pay the costs of any person who appears who was originally noticed but was not noticed of the continuance. Confirmation of the continuance and method of notification of parties shall be made to the court in a letter prior to the original hearing date. **(Rule 7.4.4 renumbered effective January 1, 2006; adopted as Rule 73.4 effective January 1, 2004)**

7.4.5 Resetting a Matter Taken Off Calendar

If a petition has been taken off calendar, it may be re-set for hearing by filing a new Notice of Hearing form, entitled "RESET Notice of Hearing." Reference shall be made to the original hearing date, and the new Notice shall be served in the same manner as that required for the original hearing. **(Rule 7.4.5 renumbered effective January 1, 2006; adopted as Rule 73.5 effective January 1, 2004)**

(Rule 7.4 renumbered effective January 1, 2006; adopted as Rule 73 effective January 1, 2004)

RULE 7.5 STATUS HEARINGS AND STATUS REPORTS

A. If a trustee or a court appointed Personal Representative, Guardian, or Conservator fails to timely file a required account, report, or petition for distribution, the court will set the matter for Status Hearing. Appearance at the hearing is mandatory for parties and counsel.

B. In all matters set for Status Hearing, (except as provided in the following paragraph) verified Status Reports must be filed no later than ten (10) days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the Status Hearing, together with a copy of the Status Report shall be served on all necessary parties. Failure to comply with any part of this rule may result in the immediate imposition of sanctions.

C. If the required account, report, or petition for distribution is filed at least ten (10) days before the date set for the Status Hearing, no Status Report is required. The filing party shall notify the Probate Filing Clerk or Probate Examiner, in writing or via FAX that the necessary documents have been filed and the date of the hearing thereon. Upon such timely notification, the Status Hearing will be taken off calendar. **(Effective January 1, 2008; Rule 7.5 renumbered effective January 1, 2006; adopted as Rule 74 effective January 1, 2004)**

RULE 7.6 ORDERS

7.6.1 Form of Orders

A. All orders or decrees in probate matters must be complete in themselves. Orders shall set forth all matters ruled on by the court, the relief granted, and the names of persons, descriptions of property and/or amounts of money affected with the same particularity required of judgments in general civil matters. Monetary distributions must be stated in dollars, and not as a percentage of the estate.

B. No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.

C. All orders distributing property and orders settling accounts shall contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

D. Probate orders shall be drawn so that their general effect may be determined without reference to the petition on which they are based.

E. In no case shall any material appear after the signature of the judge.

F. Some portion of the contents of the order must appear on the page upon which the judge's signature is affixed. **(Rule 7.6.1 renumbered effective January 1, 2006; adopted as Rule 75.1 effective January 1, 2004)**

7.6.2 Pre-Approved Orders

Orders on uncontested matters may be approved by the court at the time noticed for hearing. A copy of the signed order will be immediately available to appearing counsel. Unrepresented parties may obtain a copy of the order at the Probate Filing Clerk's Office after 1:00 p.m. on the day of the hearing. **(Rule 7.6.2 renumbered effective January 1, 2006; adopted as Rule 75.2 effective January 1, 2004)**

7.6.3 Orders Correcting Clerical Errors

A. If, through inadvertence, the signed order is incorrect, and such inadvertence is brought to the attention of the court by written ex parte petition, the court will sign a new, correct order that relates back to the date of the original order (nunc pro tunc).

B. If the nunc pro tunc order does not restate all of the terms of the original order, it shall be substantially in the following form: "Upon consideration of the petition of (name of declarant) to correct a clerical error, the (title and date of mistaken order) is corrected by striking the following: (incorrect sentence or paragraph) and by substituting the following: (correct sentence or paragraph."

C. A complete sentence or paragraph shall be stricken, even if it is intended to correct only one word or a single figure. Reference shall be made to page and line numbers of the order being corrected. **(Rule 7.6.3 renumbered effective January 1, 2006; adopted as Rule 75.3 effective January 1, 2004)**

(Rule 7.6 renumbered effective January 1, 2006; adopted as Rule 75 effective January 1, 2004)

RULE 7.7 EX PARTE PROCEEDINGS

A. All ex parte petitions requesting that notice be dispensed with must be presented to the Probate Examiner's Office for review. The court may grant or deny an ex parte request, or may set the matter for hearing and require notice to appropriate parties.

B. No testimony is taken in connection with ex parte applications in the Probate Department, so the application must contain facts sufficient to justify the relief requested. The facts stated in each declaration shall be set forth with particularity. Each declaration shall show affirmatively that the declarant can testify competently to the facts stated therein. The declarant may be any person who has knowledge of the facts. The application and declarations must be verified.

C. All ex parte applications shall be accompanied by a separate order complete it itself. It is not sufficient for such an order to state that the application has been granted, or that the sale of property as set forth in the application has been approved.

D. Requests to dispense with accountings will not be considered ex parte.

E. Petitions for Final Distribution on Waiver of Account or Accountings on Waiver of Notice may not be submitted ex-parte, but shall be placed on the court's regular calendar. **(Effective January 1, 2008; Rule 7.7 renumbered effective January 1, 2006; adopted as Rule 76 effective January 1, 2004)**

RULE 7.8 BLOCKED ACCOUNTS

7.8.1 General Provisions

A. **Notice and Hearing.** A petition seeking to deposit funds or securities into a blocked account in a financial institution or trust company may be granted by the court ex parte.

B. **Title to Account.** The order as well as the title to the blocked account shall show the name of the minor, conservatee, or estate and shall state that the account is "blocked" and that no withdrawals of principal or interest shall be made without the prior written order of the court.

C. **Account Requirements.** All cash deposits into blocked accounts shall be into federally insured, interest bearing accounts.

D. **Maximum in Blocked Accounts.** In no event shall assets exceeding the maximum insured amount be held in any one federally insured depository. If it becomes necessary to transfer funds to an additional federally insured depository to comply with this rule, a request to transfer such funds may be submitted to the court on ex parte application, and the transfer shall be by an interbank or other direct transfer transaction unless otherwise approved or ordered by the court.

E. **Separate Petitions and Blocked Accounts for Each Minor.** A separate petition shall be filed for each minor whose funds are to be deposited into a blocked account. A separate blocked account shall be established for the funds of each minor.

F. **Withdrawals.** Withdrawals from a blocked account may be requested by ex parte application using the appropriate Judicial Council form. In all cases, sufficient documentation to support the requested withdrawal must be submitted with the application, including copies of bills, statements, or letters related to the request.

G. **Notice.** The court in its discretion may require a noticed hearing, even if the request to withdraw funds is submitted ex parte.

H. **Direct Payment.** If the withdrawal is granted, the order shall provide that payment will be made directly to the vendor or service provider and not to the applicant, unless the withdrawal is for reimbursement of an expense already paid by the applicant.

I. **Court Policy.** Absent a showing of good cause, it is the policy of the court to block all funds in Guardianship Estates. **(Effective January 1, 2012; Rule 7.8.1 renumbered effective January 1, 2006; adopted as Rule 77.1 effective January 1, 2004)**

7.8.2 Accounting Requirements for Blocked Accounts

A. If a guardianship of the estate is established and the court orders that all assets are to be deposited into a blocked account, the guardian shall file an inventory and appraisal within ninety (90) days of appointment and thereafter file a first account one (1) year after date of appointment. The petition on the first account may include a request that the court dispense with further accountings until the guardianship is terminated.

B. If the guardian of the estate requests authority to deposit the minor's funds into a blocked brokerage account to allow greater flexibility in investments, the court will not dispense with accountings but will continue to require annual and biennial accountings even though all assets are blocked. **(Rule 7.8.2 renumbered effective January 1, 2006; adopted as Rule 77.2 effective January 1, 2004)**

7.8.3 Withdrawals from Minor's Blocked Account During Minority

A. With the exception of withdrawals to pay taxes on a minor's funds, requests to withdraw funds will ordinarily be denied if either or both parents are living and financially able to pay the requested expenditure. An application to withdraw funds to pay income taxes on the minor's funds shall include a breakdown of state and federal taxes due and any costs of preparation. An application to withdraw funds for purposes other than payment of taxes shall be accompanied by a financial declaration by the parent or parents describing their income and expenses and, if applicable, other circumstances justifying the use of the minor's assets. A statement regarding the minor's employment and income, if any, shall also be attached. If the request is for multiple items, each item must be listed separately, with its cost.

B. If a withdrawal is requested for the purchase of a car, a copy of the proposed purchase/sale agreement shall be attached to the application showing the type of car, year, purchase price, and whether payment will be made in full or in specified installments. A binding agreement shall not be entered into before obtaining a court order. A casualty insurance quote shall be attached to the application showing public liability coverage at current state minimum limits per person and per accident for automobile insurance or policy limits equal for the funds which will remain on deposit after the purchase, whichever is greater. The application shall contain an explanation of who will pay for the insurance. A copy of the minor's current report card; a statement as to who will pay for the automobile's maintenance; and a statement of the current availability of public and alternate transportation shall also be submitted.

C. If the request for withdrawal pertains to medical or dental care, including orthodontia, a statement from the doctor, dentist or orthodontist regarding the need for the treatment to be performed and the cost of the treatment shall be submitted, together with a declaration by the applicant explaining why the expense is not covered by insurance.

D. Requests to pay for educational or recreational programs must describe the program and include a statement as to the necessity or appropriateness of the program for the minor. **(Effective January 1, 2012; Rule 7.8.3 renumbered effective January 1, 2006; adopted as Rule 77.3 effective January 1, 2004)**

(Rule 7.8 renumbered effective January 1, 2006; adopted as Rule 77 effective January 1, 2004)

RULE 7.9 PUBLICATION

A. If the decedent resided or owned property within the city limits of the following cities, publication shall be made as follows:

If the residence or property owned was in:	**Publish in**
Fowler	Fowler Ensign
Fresno	Fresno Bee, or Fresno Business Journal
Kerman	Kerman News
Kingsburg	Kingsburg Recorder
Mendota	Firebaugh Mendota Journal, or Mendota Times
Prather	Mountain Press
Reedley	Reedley Exponent
Sanger	Sanger Herald
San Joaquin	Westside Advance
Selma	Selma Enterprise

B. If the decedent lived outside the city limits of the cities listed above, or anywhere else within the County of Fresno, publication shall be in the Fresno Bee or the Fresno Business Journal. This includes but is not limited to the following areas: Auberry, Big Creek, Biola, Cantua Creek, Caruthers, Centerville, Clovis, Coalinga, Del Ray, Dunlap, Friant, Firebaugh, Five Points, Huron, Kings Canyon, Laton, Miramonte, Orange Cove, Parlier, Piedra, Pinedale, Raisin City, Shaver Lake, Squaw Valley, Tollhouse, or Tranquility. **(Effective January 1, 2009; Rule 7.9 renumbered effective January 1, 2006; adopted as Rule 78 effective January 1, 2004)**

RULE 7.10 LETTERS FOR MULTIPLE REPRESENTATIVES

When more than one person is appointed as guardian, conservator, or personal representative, the names and signatures of all appointed persons shall appear on each copy of the Letters to be issued by the Clerk. **(Rule 7.10 renumbered effective January 1, 2006; adopted as Rule 79 effective January 1, 2004)**

7.10.1 Duties and Liabilities

The birth date and driver's license number, if any, of a personal representative (other than public entities or trust companies) shall be provided in the receipt of acknowledgement of duties and liabilities as required by Probate Code section 8404.

This information shall be kept confidential and shall not be made available for public inspection without a court order. **(Effective January 1, 2006, New)**

(Rule 7.10 renumbered effective January 1, 2006; adopted as Rule 79 effective January 1, 2004)

RULE 7.11 INVENTORY AND APPRAISAL

7.11.1 Definitions

A "Final" Inventory and Appraisal may be submitted as a complete inventory of all estate assets, or may be filed after the filing of a partial inventory.

A "Partial" Inventory describes only a portion of the known estate assets, and should be identified as "Partial #1," #2, etc.

A "Supplemental" Inventory contains assets discovered or received after a Final Inventory and Appraisal has been filed.

A "Corrected" Inventory supersedes and completely restates an original inventory (final, partial or supplemental) and should show the total inventory amount as amended. **(Rule 7.11.1 renumbered effective January 1, 2006; adopted as Rule 80.1 effective January 1, 2004)**

7.11.2 Inventory Description of Real Property

The Inventory and Appraisal shall describe real property by legal description, street address (if any), whether improved or unimproved, and any assessor's parcel number. The Inventory must identify the estate's interest in the property by percentage of ownership, and how title was held (i.e., joint tenancy, community property, sole and separate property, etc.) **(Rule 7.11.2 renumbered effective January 1, 2006; adopted as Rule 80.2 effective January 1, 2004)**

(Rule 7.11 renumbered effective January 1, 2006; adopted as Rule 80 effective January 1, 2004)

RULE 7.12 PETITIONS FOR DISTRIBUTION

7.12.1 Listing of Property to be Distributed

A petition for distribution must list and describe in detail all property to be distributed. The description shall include cash on hand. Promissory notes must be described as secured or unsecured. If secured, the security interest must be described. The legal description and APN of all real property must be included. Description in the petition of any asset by reference to the inventory is not acceptable. **(Rule 7.12.1 renumbered effective January 1, 2006; adopted as Rule 81.1 effective January 1, 2004)**

7.12.2 Characterization of Property to be Distributed

A petition for distribution must describe the character of the property, whether separate or community. If some portion of the estate consists of community property, the petition must show whether the interest to be distributed is the decedent's one-half (1/2) interest in the community property or the community property of both spouses. **(Rule 7.12.2 renumbered effective January 1, 2006; adopted as Rule 81.2 effective January 1, 2004)**

7.12.3 Distribution of Personal Effects

The court will not order distribution of personal property, such as furniture, vehicles, or appliances, in undivided interests without the written consent of all distributees. **(Rule 7.12.3 renumbered effective January 1, 2006; adopted as Rule 81.3 effective January 1, 2004)**

7.12.4 Distribution of Real Property

A. The court will not order distribution of real property in undivided interests absent the written consent of all distributees.

B. Parties requesting distribution of real or personal property in undivided interests to a minor must first submit a detailed declaration documenting the need therefore and why it would be in the child's best interest. **(Effective January 1, 2008, New)**

7.12.5 Distribution to Inter Vivos Trusts

If property in the estate is to be distributed to a pre-existing trust, the current trustee must file a declaration setting forth the name of the trust, its establishment date, taxpayer identification number, verifying that the trust is in full force and effect, and that the trustee has an executed copy of the trust in possession. **(Effective January 1, 2008, Rule 7.12.4 effective January 1, 2006; adopted as Rule 81.4 effective January 1, 2004)**

(Rule 7.12 renumbered effective January 1, 2006; adopted as Rule 81 effective January 1, 2004)

RULE 7.13 WAIVER OF ACCOUNTING IN PROBATE ESTATES

A petition requesting distribution on a waiver of accounting shall include the current status of all inventoried items. The petition must include a list of the property on hand for distribution as it exists at the time of the petition and not merely as shown on the inventory and appraisal, unless there has been no change. **(Rule 7.13 renumbered effective January 1, 2006; adopted as Rule 82 effective January 1, 2004)**

RULE 7.14 DISCLAIMERS AND ASSIGNMENTS IN PROBATE ESTATES

A copy of a disclaimer must be on file prior to the hearing on a petition for distribution of an affected asset. An assignment of a beneficiary's interest in a probate estate shall be filed prior to the hearing on a petition for distribution of the beneficiary's interest. **(Rule 7.14 renumbered effective January 1, 2006; adopted as Rule 83 effective January 1, 2004)**

RULE 7.15 CONSERVATORSHIPS AND GUARDIANSHIPS

7.15.1 Investigation Costs

Unless investigation fees are waived due to hardship per Probate Code section 1851.5 or 1513.1, the court will assess fees for the cost of investigations in guardianship and conservatorship cases. Investigation fees in guardianship matters

will usually be waived if the fee for filing the initial petition was waived. Petitioners in guardianship cases who do not qualify for waiver of investigation fees may request permission from the managing investigator to make monthly payments due to hardship. Bills will be sent to conservators and guardians or parents, and copies will be sent to their attorneys.

Upon receipt of the bill, payment is required within thirty days to:

Fresno County Superior Court
Attention: Probate
1130 O Street, Room 300
Fresno, CA 93721

(Effective July 1, 2011; Rule 7.15.1 renumbered effective January 1, 2006; adopted as Rule 84.1 effective January 1, 2004)

7.15.2 Independent Powers

It is the policy of the court to grant a guardian or conservator only those independent powers necessary in each case to administer the estate. A request for all powers described in Probate Code § 2591 will not be granted by the court. Each independent power requested must be justified by, and narrowly tailored to the specific circumstances of that case. Any powers so granted must be specified in the order and in the Letters of Guardianship or Conservatorship. **(Rule 7.15.2 renumbered effective January 1, 2006; adopted as Rule 84.2 effective January 1, 2004)**

7.15.3 Temporary Conservatorships and Guardianships

A. **Filing Procedure**. The original and two (2) copies of the Petition for Appointment of Temporary Guardian or Conservator shall be presented to the Clerk for filing.

B. **Hearings**. The court may require that a hearing be held on any Petition for Appointment of a Temporary Guardian or Conservator, even if submitted ex parte. In each instance, the court will advise counsel or the self-represented petitioner of the need for a hearing.

C. **Requirements**. The court will generally deny requests for ex-parte appointment of a temporary guardian unless the application establishes that a present emergency exists and that the minor is currently residing with the petitioner. If the minor is residing with a parent and the petitioner believes the child is in danger, a referral should be made to Child Protective Services. **(Effective January 1, 2012; Rule 7.15.3 renumbered effective January 1, 2006; adopted as Rule 84.3 effective January 1, 2004)**

7.15.4 Receipt of Public Benefits

When the only asset or income of a proposed conservatee or ward is the receipt of public assistance benefits, the court does not require appointment of a conservator

or guardian of the estate. **(Rule 7.15.4 renumbered effective January 1, 2006; adopted as Rule 84.4 effective January 1, 2004)**

7.15.5 Guardianship of the Estate

Where appointment of a guardian of the estate is sought for more than one related minor, a separate case number shall be assigned for each minor. If the minors are from the same immediate family, only one filing fee shall be charged. If the petition requests appointment as guardian of the person only, a single petition shall be filed for all sibling minors. **(Effective January 1, 2012; Rule 7.15.6 (now 7.15.5) renumbered effective January 1, 2006; adopted as Rule 84.6 effective January 1, 2004)**

7.15.6 Guardianship Filing Requirements

A. When a Petition for Appointment of a Guardian is filed, the court will retain the original copy of all documents (except the Notice of Hearing), and will require the following additional copies:

1. Face page and two additional copies of the Petition.

2. Two additional copies of the Guardianship Questionnaire.

3. Two additional copies of the Declaration Under Uniform Child Custody and Jurisdiction Act (UCCJEA).

B. The Guardianship Questionnaire is a local form which is available at 1130 O Street, Fresno, CA, or on the court's website. **(Effective January 1, 2012; Rule 7.15.7 (now 7.15.6) renumbered effective January 1, 2006; adopted as Rule 84.7 effective January 1, 2005)**

7.15.7 Effect of Other Pending Proceedings Regarding the Child

A Petition for Appointment of a Guardian of a minor will not ordinarily be considered if any of the following circumstances exist:

A. A matter involving custody of a child is presently pending in the Family Law Court. In such case, a petitioner seeking custody or visitation rights will be instructed to seek joinder in the family law proceeding and request relief from that court. Under emergency conditions, a temporary guardianship may be granted, but only if the child is already in the custody of the proposed guardian.

B. The minor is subject to the jurisdiction of the Juvenile Court. **(Effective January 1, 2012; Rule 7.15.8 (now 7.15.7) renumbered effective January 1, 2006; adopted as Rule 84.8 effective January 1, 2004)**

7.15.8 Conservatorship Requirements

A. **Conservator Video.** Before the hearing on the appointment of a conservator, the proposed conservator shall view the videotape entitled "With Heart:

Understanding Conservatorship." The videotape is available for viewing at the Probate Clerk's Office in Fresno, California under the supervision of a Probate Filing Clerk. A proposed conservator who wishes to view the video must present a valid form of picture identification to the Clerk. Call the Clerk at (559) 457-1888 for viewing times. The proposed conservator shall present a "Proof of Viewing Videotape" form to the court at the time of the initial hearing. A conservator who resides outside of Fresno County may make arrangements to view the videotape through the Court Investigator's Office of any county of this state.

B. **Sale of Conservatee's Residence and Exclusive Listings for Sale.** Petitions for authority to sell the conservatee's residence must be set on the regular probate calendar. Request for authorization to execute an exclusive listing agreement may be submitted ex parte.

C. **Appointment of Successor Conservator.** If the Petitioner and the proposed successor conservator are not the same person, the petition must specifically allege that the petitioner met and conferred with the person being nominated for appointment as successor conservator and that the person agrees to accept appointment as successor conservator. Notice must be mailed to the proposed successor conservator. **(Effective January 1, 2012; Rule 7.15.9 (now 7.15.8) renumbered effective January 1, 2006; adopted as Rule 84.9 effective January 1, 2004)**

7.15.9 Compensation of Court-Appointed Attorney

A. **Source of Payment**. At the time of appointment, the Order Appointing Counsel shall indicate whether the attorney is to be paid by the conservator of the estate, by the person represented, or by the County of Fresno at the court rate.

B. **Payment by Conservator of Estate or Person Represented**. If the conservatee or person represented has the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the attorney shall file a petition for compensation, including a complete statement of the services rendered and a detailed breakdown of the hours spent, the hourly rate and the total amount requested for such services. Notice of the hearing shall be given pursuant to Probate Code § 1460.

C. **Payment by County**. If the conservatee or person represented does not have the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the attorney shall request payment by filing the form entitled "Application and Order for Payment of Attorney's Fees" which is available from the Probate Filing Clerk. The application shall be accompanied by:

1. A complete statement of the services rendered, including the date, hours spent and narrative description of the services rendered, and

2. A detailed breakdown of all expenses paid, if any, including photocopies of receipts.

The application may be submitted to the Probate Filing Clerk, Room 300 of the B.F. Sisk Courthouse, for delivery to the Clerk designated to review and process the application. Questions regarding content and requirements may be directed to the Clerk prior to submission of the application. The attorney may thereafter file a separate ex parte application to be submitted to the Probate Judge for discharge as attorney of record for the conservatee or person represented.

D. **Payment to Counsel for LPS Conservatee**. If private counsel is appointed to represent an LPS conservatee or proposed LPS conservatee and the person has the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the petition for compensation shall be filed in the LPS proceeding following the guidelines set forth in subsection (B) above. If a conservator of the estate has been appointed, the petition should include the case number of the estate proceeding, if known to the court-appointed attorney. The court shall order the conservator of the estate or, if none, the person, to pay in any manner the court determines to be reasonable and compatible with the person's financial ability. **(Effective January 1, 2012; Rule 7.15.10 (now 7.15.9) renumbered effective January 1, 2006; adopted as Rule 84.10 effective January 1, 2004)**

(Rule 7.15 renumbered effective January 1, 2006; adopted as Rule 84 effective January 1, 2004)

RULE 7.16 ATTORNEY'S FEES AND COMMISSIONS IN GUARDIANSHIP AND CONSERVATORSHIP

A. Attorney fees and commissions in guardianship and conservatorship matters are awarded based upon what is just and reasonable. Except as set forth in Rule 7.16 (B), below, an attorney seeking compensation or reimbursement of costs shall comply with California Rules of Court, Rules 7.750 through 7.752.

B. The court will allow a flat fee for attorney services, without the need to comply with Rule 7.16 (A) above, as follows:

1. Establishment of a conservatorship or guardianship and preparation of the first account: $2,500.00.

2. Court confirmed sale of real property: $1,250.00.

3. Attorney-prepared income tax returns: $600.00.

4. Each timely filed subsequent account: $1,250.00 per year.

5. If the account is not timely filed, compliance with Rule 7.16 (A), above, is required.

C. The court will allow a flat fee for guardians and conservators, without the need to comply with Rule 7.16 (A), above, as follows:

1. Sale of personal property: 10% of the sales price, up to a maximum fee of $1,000.00.

2. Sale of real property: $1,000.00 (court confirmation is not required).

D. Attorneys, guardians, and conservators may request fees in excess of the flat fees set forth in paragraphs B and C, above, but must comply with the requirements of Rule 7.16 (A), above. **(Effective January 1, 2012, Rule 7.16 renumbered effective January 1, 2006; adopted as Rule 85 effective July 1, 2004)**

RULE 7.17 REIMBURSEMENT OF ATTORNEY'S, CONSERVATOR'S, GUARDIAN'S OR PERSONAL REPRESENTATIVE'S COSTS ADVANCED

A. The following costs advanced may be reimbursed to the attorney, conservator, guardian or personal representative without prior court permission:

1. Fees charged by the Clerk of the Court.

2. Newspaper publication fee.

3. Surety bond premiums.

4. Probate referee fees.

5. Court investigator's fees.

B. The following expenses are considered by the court to be part of the cost of doing business, and are not reimbursable costs or fees:

1. Photocopy expense (except as set forth in C below).

2. Local telephone charges.

3. Computer research fees.

4. Secretarial services.

5. Travel to and from court.

6. Communications with Probate Examiners.

7. Runner services.

C. Requests for reimbursement of allowable costs must be supported by itemized declarations and are subject to the court's discretion. Allowable costs include but are not limited to:

1. Postage and photocopy expense when more than ten people are entitled to notice.

2. Necessary use of alternative delivery services: i.e., UPS, Fed-Ex, wire transfer. **(Effective January 1, 2008, Rule 7.17 renumbered effective January 1, 2006; adopted as Rule 86 effective January 1, 2004)**

RULE 7.18 EXTRAORDINARY FEES IN DECEDENT'S ESTATES

A. The court will allow the following amounts as extraordinary fees for attorneys without further justification or declaration as would otherwise be required by California Rules of Court, Rule 7.702-7.703:

1. Court confirmed sales of real property: $1,000.00.

2. Attorney-prepared Federal Estate Tax return: $2,000.00.

3. Attorney-prepared Estate Income Tax return: $500.00.

B. The court will allow the following amounts as extraordinary fees for personal representatives without further justification or declaration as would otherwise be required by California Rules of Court, Rule 7.702-7.703:

1. Sales of real property: $1,000.00.

2. Sale of personal property: 10% of the sales price, up to a maximum fee of $1,000.00.

3. Personal-representative prepared Federal Estate Tax return: $2,000.00.

4. Personal-representative prepared Estate Income Tax return: $500.00. **(Effective January 1, 2008, Rule 7.18 renumbered effective January 1, 2006; adopted as Rule 87 effective January 1, 2004)**

RULE 7.19 TRUSTS, SPECIAL NEEDS TRUSTS AND SUBSTITUTED JUDGMENTS

A. A copy of the proposed trust instrument shall be attached to the petition.

B. Trusts funded by court order in Fresno County must comply with California Rules of Court 7.903 and must require court confirmation of sales of trust real property.

C. A petition to approve the establishment of a trust for a conservatee should include a recommendation for the amount of bond to be posted by the proposed trustee and for termination of the conservatorship estate. Following termination of the conservatorship of the estate, new Letters shall issue for the conservatorship of the person only. Prior to granting a petition to establish a trust, the court will require that a final accounting be filed by the conservator. Thereafter, all trust accountings shall be filed in a new Trust file, and a filing fee shall be payable upon the filing of each account.

D. Trusts created by the court shall be subject to the court's continuing jurisdiction unless otherwise specified, and shall be subject to periodic accounts as are required in guardianship and conservatorship matters.

E. When a trust is subject to continuing court supervision, no payment of fees to attorneys, trustees, or others may be made without prior court approval. **(Effective January 1, 2008, Rule 7.19.1 renumbered effective January 1, 2006; adopted as Rule 88.1 effective January 1, 2004)**

(Rule 7.19 renumbered effective January 1, 2005; adopted as Rule 88 effective January 1, 2004)

RULE 7.20 COURT CONFIRMED SALES OF REAL PROPERTY

Overbids. When an overbid is made in court, the bidder must submit cash, money order, or certified check at the time of the hearing in the amount of ten (10) percent of the minimum overbid. **(Effective July 1, 2011, New)**

(Rule 7.20, New effective July 1, 2011)

(Chapter 7 amended effective January 1, 2006; adopted as VII effective July 1, 1992)

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APPENDIX A: CIVIL

ATTORNEYS' FEES UPON DEFAULT JUDGMENT

A. Upon entry of default judgment the following attorneys' fees shall be awarded under normal conditions, or included in the judgment by the Clerk, in actions on promissory notes, contracts, and foreclosures, which provide for attorneys' fees:

1. Action on note or contract:

20% of the first $5,000.00 in principal, or $400.00, whichever is greater;
15% of the next $10,000.00 in principal;
10% of the next $10,000.00 in principal;
5% of the next $25,000.00 in principal;
2% of the next $50,000.00 in principal;
1% of the principal amount over $100,000.00.

"Principal," as used here means the principal obligation owing under the note or contract.

2. Foreclosure: the same amount as computed above, increased by 10%, or $750.00, whichever is greater.

3. A petition for compensation for additional services shall include an itemized statement of the services rendered or to be rendered by the attorney and a reference in the caption and prayer to the request for additional fees. An appearance by the attorney or the parties is not normally, but may be, required. In determining such fees, the court shall consider the experience of counsel, the time expended, the complexity of the issues, the amount involved and the results achieved.

B. An action on a book account, when Civil Code § 1717 does not apply, shall be governed by Civil Code § 1717.5. **(Effective July 1, 2004)**

APPENDIX B: CRIMINAL

APPENDIX B

RESERVED.

APPENDIX C: FAMILY LAW

APPENDIX C1

LIST OF ABBREVIATIONS

CAU	Fresno County District Attorney – Child Abduction Unit
DCSS	Department of Child Support Services
FCS	Fresno County Family Court Services
MSA	Marital Settlement Agreement
NOM	Notice of Motion
OSC	Order to Show Cause
TRO	Temporary Restraining Order
UCCJEA	Uniform Child Custody Jurisdiction and Enforcement Act

(Effective January 1, 2006)

APPENDIX D: JUVENILE

APPENDIX D1

TABLE OF ABBREVIATIONS

CASA	Court Appointed Special Advocate
CPS	Child Protective Services
DCFS	Department of Children and Family Services
GAL	Guardian Ad Litem
RRD	Revenue and Reimbursement Division

(Effective January 1, 2007)

FRESNO COUNTY SUPERIOR COURT
APPENDIX D2

SUPERIOR COURT, COUNTY OF FRESNO
SITTING AS THE JUVENILE COURT

COURT DESIGNATED CHILD ADVOCATE **OATH**

_____
print your full legal name

I, _____, do solemnly swear, that
ADVOCATE'S NAME

I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that in performing the duties of a Court Appointed Special Advocate, I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of a Court Appointed Special Advocate to the best of my ability and will serve the best interests of the child.

As an officer of the Court, I will respect and follow the rules of the Court and will to the best of my ability maintain fairness, impartiality and integrity in my role as advocate for the child.

I will adhere to the rules of confidentiality and will respect the privacy of all parties.

I will not take a case where I have any prior knowledge of the child or family member.

I agree to comply with the requirements of the child abuse reporting law (Welfare and Institutions Code Section 11165 et. seq.), reporting any known or suspected instances of child abuse or neglect.

DATED:_____

_____
Appointed Child Advocate

_____
Presiding Judge, Juvenile Court

FRESNO COUNTY SUPERIOR COURT
APPENDIX D3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

In the matter of, _____ DOB: A Minor.	No. _____ **STIPULATION FOR DISCLOSURE OF JUVENILE COURT RECORDS** [W&I §827]

The parties in the above-entitled action hereby stipulate to a limited disclosure of juvenile court records involving the minor in the above-entitled matter. The limitations are as follows:

1. The disclosure is limited to only those documents that meet the description of the documents requested in the Welfare & Institutions Code §827 petition.

2. The disclosure is limited to the party that filed the §827 petition, opposing parties, all parties' counsel, counsel's immediate office staff, and any expert witness and/or investigator retained by counsel for purposes of the pending matter that gave rise to the petition.

///

3. The disclosed records are still open to any available objection and no determination is made as to their admissibility in any judicial or administrative proceeding.

4. This disclosure does not allow for testimony to be taken concerning the documents nor the documents to be entered into evidence at trial or an evidentiary hearing. Any such further dissemination requires an additional §827 petition.

5. The requesting party shall pay the County Department of Children & Family Services reasonable copy costs as defined in Evidence Code §1563(b)(1).

6. At the conclusion of the matter that gave rise to the petition, all parties are required to destroy the released documents or return them to _____.

Date: _____ _____

_____

Date: _____ _____

ORDER

Pursuant to stipulation of the parties and good cause appearing therefor,

IT IS ORDERED that the County of Fresno, Department of Children & Family Services shall disclose documents responsive to the §827 petition within 10 days of the signing of this order or as soon thereafter as the parties agree.

Date: _____ _____

Judge of the Superior Court

FRESNO COUNTY SUPERIOR COURT

APPENDIX E: PROBATE
APPENDIX E1

Attorney/Bar Number:
Address:
City:
Phone: Fax:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

In the matter of	)	No.
	)	
	)	AGREEMENT TO SUBMIT DISPUTE TO
	)	A TEMPORARY JUDGE AND ORDER
	)	THEREON
_____	)	

"Party 1" and "Party 2" agree as follows:

1. There is a dispute between "Party 1" and "Party 2" relating to the _____

_____.

(the "Petition") filed by "Party ___" and now set for hearing on (date) _____

in Department _____ of this Court at _____ a.m.

2. The dispute involves the following issues ("Issues"): (Describe issues: e.g.)

a. _____
The correctness of the First Account Current

_____
including receipts and disbursements reflected therein:

b. _____
The correctness of values in the inventories filed in these proceedings

c. _____
Surcharge against Personal Representative and/or counsel for Personal Representative for losses

_____
to the Estate by reason of alleged failure of the Personal Representative and/or his counsel

_____
to exercise ordinary care and diligence in managing and controlling the estate.

d. _____
Proper computation of statutory fees and commissions

(If additional space needed, please attach Exhibit A.)

3. "Party 1" and "Party 2" have agreed to resolve the Issues by referring the dispute to a temporary judge, for summary determination pursuant to Probate Code section 9620(a) [or section 2405(a)];

4. The parties acknowledge that they have received a copy of the Fresno County Probate Policy relating to the Probate Code section 9620(a) [or section 2405(a)] procedure and its exhibits and have read it and agree to be bound by all terms of the Policy and its exhibits;

5. The parties hereto agree that the temporary judge shall proceed promptly to hear and determine the Issues in controversy by summary procedure, without further pleadings or discovery. The decision of the temporary judge shall be subject to section 632 of the Code of Civil Procedure. Judgment shall be entered on the decision of the temporary judge, and shall be as valid and effective as if rendered by a judge of this Court in an action between the parties.

DATED: _____ _____
"Party 1"

DATED: _____ _____
"Party 2"

ORDER REFERRING DISPUTE FOR
SUMMARY DETERMINATION PER AGREEMENT

IT IS HEREBY ORDERED that, pursuant to the agreement of "Party 1" and "Party 2," the issues set forth in said agreement are hereby referred to _____, as temporary judge for summary determination pursuant to Probate Code section 9620(a) [or section 2405(a)], and the Fresno County Probate Policy for Short-Cause Contested Probate Matters.

DATED: _____ _____
Judge of the Superior Court

Appendix E1 (Rev 7-1-99)

FRESNO COUNTY SUPERIOR COURT

APPENDIX E2

ATTORNEY APPLICATION FOR APPOINTMENT TO PROBATE REFERENCE PANEL

I, _____, apply for appointment to the Probate Reference Panel.

1. I was admitted to practice law in the State of California in (year) _____.

2. I agree to comply with the terms of the eligibility requirements, including but not limited to the following.

a. I have read the eligibility requirements for panel members, and I meet those requirements.

b. I acknowledge ethical conflict of interests rules apply. I will review my position with respect to each particular appointment. I agree to advise the parties immediately if a conflict exists or arises.

c. I have read and agree to comply with all applicable sections of Fresno Superior Court Local Rules, Probate Policy Memorandum.

3. I speak the following foreign languages: _____

4. I have been subject to a State Bar disciplinary proceeding:

Yes: _____ No: _____

If you answered "Yes," please explain: _____
_____

5. If at any time while I am a member of this panel my status as a member of the State Bar changes, I agree to notify the Court, in writing within 10 days of that change.

6. I do not wish to serve as temporary judge in these types of matters:

_____conservatorships and guardianships
_____probate administration
_____trust administration
_____selection of fiduciaries
_____surcharge actions
_____accounting disputes

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Dated: _____ Signed: _____

Name: _____

Address: _____
_____

Telephone: _____
Facsimile: _____

FRESNO COUNTY SUPERIOR COURT

APPENDIX E3

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

In the Matter of _____	Case No. "PARTY 1's" BRIEF OF REFERENCE HEARING BEFORE _____, TEMPORARY JUDGE

"Party 1" submits the following pursuant to reference under Probate Code Section 9620(a) [or Section 2405(a)] with respect to the hearing now set for (date) _____ before (name) _____ as temporary judge.

1. Statement of Issues: [Number and identify each issue to be decided. These should coincide with the issues described in the reference Agreement.]

2. Documents: [Make reference to the "Joint Document Binder" previously agreed to by the parties and filed with the reference judge concurrently with this Brief. If there are any "disputes" regarding documents, please identify the document and your position regarding its relevance and admissibility. (These rules, if any, will be resolved at the outset of the hearing.)]

3. Witnesses: [Please list the witnesses whose testimony you will present and briefly describe what each witness will say.]

4. Positions: [Please present a brief and concise statement of your position on each issue, with numbering corresponding to the list of issues in Item 1 above.]

DATED:

_____
(Signature)

FRESNO COUNTY SUPERIOR COURT

APPENDIX E4

ADDITIONAL USEFUL INFORMATION

1. Service on Foreign Consulates: When service upon a foreign consulate is required, contact information for all registered consulates may be obtained at the following web site: www.state.gov/s/cpr/rls/fco. Click on the release you want, then the foreign consul.

2. Guardianship Assistance: Guardianship self-help packets in Spanish and English are available in the Probate Filing Clerk's Office for a nominal fee. The court also offers a Guardianship Clinic to provide assistance and information to self-represented litigants.

3. Spanish Self-help Center: The Spanish Self-help Center, sponsored by the court, offers assistance to Spanish-speaking people seeking guardianship.

4. Location of Probate Court: The Probate Clerk's Office and Probate Court are located at the B.F. Sisk Courthouse, 1130 O Street, Third Floor, Fresno, CA. (**Effective July 1, 2011**)

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